

Clarke, Victoria

From: Engelman-Lado, Marianne
Sent: Thursday, February 04, 2021 12:42 PM
To: ethics
Subject: Ethics Pledge
Attachments: Biden Ethics Pledge for digital signature.pdf

Attached please find the signed pledge.

Many thanks,

Marianne Engelman Lado

ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. *Lobbyist Gift Ban.* I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.
2. *Revolving Door Ban — All Appointees Entering Government.* I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.
3. *Revolving Door Ban — Lobbyists and Registered Agents Entering Government.* If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq.*, or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq.*, within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:
 - (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;
 - (b) participate in the specific issue area in which that particular matter falls; or
 - (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.
4. *Revolving Door Ban — Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.
5. *Revolving Door Ban — Senior and Very Senior Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.
6. *Revolving Door Ban — Appointees Leaving Government to Lobby.* In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.
7. *Golden Parachute Ban.* I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.
8. *Employment Qualification Commitment.* I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.
9. *Assent to Enforcement.* I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

EngelmanLado, Marianne

Digitally signed by EngelmanLado, Marianne
Date: 2021.02.04 12:35:44 -05'00'

February 4, 2021

Date

Signature

Name (Type or Print):

Marianne Engelman-Lado

From: [Fugh, Justina](#)
To: [Chase, Joann](#); [Conger, Nicholas](#); [Diaz, Catherine](#); [Efron, Brent](#); [Frey, H](#); [Goldberg, Ruby](#); [Michalos, Maria](#); [O'Brien, Grant](#); [Nunez, Alejandra](#); [Kim, Eun](#); [Sabater, Juan](#); [Waterhouse, Carlton](#); [Engelman-Lado, Marianne](#)
Cc: [Sinceré Harris](#); [Mercado Violand, Fernando](#)
Subject: Hello from EPA Ethics!
Date: Monday, February 01, 2021 9:33:00 AM

Hi there,

My name is Justina Fugh, and I'm the director of EPA's Ethics Office. Welcome aboard! In your orientation materials, Patricia Moore asked you to contact me about your initial ethics training. My staff and I provide that training to you "in person" (now virtually) so you needn't click on the ethics training module link she gave you. Instead, you'll get virtual training with us on Thursday, February 4 from 12 noon to 1 pm. Because we've got a baker's dozen of you starting today, we'll offer two initial ethics training sessions simultaneously. With fewer people on each call, you'll have a greater opportunity ask questions. I'll randomly assign you to a session, and you'll get a Teams invitation from me later today.

In addition, each of you is required to file a public financial disclosure report electronically. I will assign you that report today, using your EPA email address. But I noticed that a couple of you may have emails that don't necessarily correspond to your preferred names so you might be looking to change your email address (don't ask me how to do that; I don't know!). If you are going to want to change your email address, then let me know. For now, we can set up your account using your personal email address and then ask to have the account merged with your EPA email once you've got that settled. That report is due 30 days from your start date, and you can be assessed a late filing fee, so this is one of those important things you just have to do.

Again, welcome to EPA and let me know if you have any specific questions before we connect on Thursday!

Happy Monday!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Political Activities and Federal Employees

The Hatch Act, enacted in 1939, was amended in 1993 and 2012. It regulates the political activities of executive branch employees, excluding the President and Vice President. The following table summarizes what political activities EPA employees can and cannot do based on their appointment. Note: Public Health Service officers must adhere to 45 CFR Part 73, Subpart F, which is most similar to the Career SES/ALJ column.

Political activity means an activity “directed toward the success or failure of a political party, a candidate for partisan political office, or a partisan political group.”

Type of Activity	PAS*	Non-Career SES, Schedule C*, Title 42, SL/ST, AD*, GS, Other	Career SES, ALJs
Personal (off premises and off duty)			
Express support for or opposition to a political candidate when off duty	Yes	Yes	Yes
Run as a partisan candidate for nomination or office in a partisan election	No	No	No
Solicit and accept contributions for your campaign in a non-partisan election	Yes	Yes	Yes
Solicit a contribution from a member of your union	N/A	Yes	N/A
Work a phone bank asking individuals to volunteer	Yes	Yes	No
Campaign on behalf of a candidate in a partisan election	Yes	Yes	No
Be active on behalf of a candidate at political rallies or meetings	Yes	Yes	No
Attend political rallies and meetings	Yes	Yes	Yes
Contribute money to political organizations	Yes	Yes	Yes
Work in non-partisan voter registration drives	Yes	Yes	Yes
Work in partisan voter registration drives	Yes	Yes	No
Register and vote	Yes	Yes	Yes
Sign a nominating petition	Yes	Yes	Yes
Distribute campaign material in a partisan election	Yes	Yes	No
Work as an election judge, poll watcher, clerical worker on election day and receive compensation for that work	Yes	Yes	Yes but nonpartisan only
Drive people to polling station on behalf of a campaign	Yes	Yes	No
Affecting Official Resources			
Use office time for political activity	Yes; IG-No	No	No
Use official space for political activity in general	Yes; IG-No	No	No
Fundraising			
Attend a political fundraiser	Yes	Yes	Yes
Solicit, accept or receive political contributions in general	No	No	No
Solicit or receive a political contribution on government premises	No	No	No
Plan or organize a political fundraiser when off duty	Yes	Yes	No
Sponsor, host, or allow your name as sponsor/host for a political fundraiser	No	No	No
Serve drinks or check coats at a political fundraiser	Yes	Yes	No
Speak at a partisan fundraiser without appealing for money	Yes	Yes	No
Allow only your name to be listed as speaker on fundraising invitation	Yes	Yes	No

*PAS = Political Appointee Confirmed by the Senate; Schedule C = political appointees not confirmed by Senate; AD = Administratively Determined; SES = Senior Executive Service

Clarke, Victoria

Subject: Initial Ethics Training (alas, it's mandatory)

Location: Microsoft Teams Meeting

Start: Thu 2/4/2021 12:00 PM

End: Thu 2/4/2021 1:00 PM

Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Fugh, Justina

Required Attendees: Chase, Joann; Engelman-Lado, Marianne; Frey, H; Michalos, Maria; Nunez, Alejandra; Waterhouse, Carlton

Optional Attendees: Mosley, Ferne; Griffo, Shannon; Clarke, Victoria; Ross, Margaret

Welcome to EPA and your initial ethics training! By regulation, this session is one hour long, so please be present for the entire time. Your session will be led by Ferne Mosley, a senior attorney with more than 20 years of federal ethics service. Attached is the briefing material that she'll reference together with the Biden ethics pledge that you must sign and return to ethics@epa.gov. All of you are required to file a public financial disclosure report and, before this session, you'll be notified by email of that assignment.

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

(b) (6) United States, Washington DC

Phone Conference ID: (b) (6)

[Find a local number](#) | [Reset PIN](#)

By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use. In addition, you acknowledge that content you post may be collected and used in support of FOIA and eDiscovery activities.

[Learn More](#) | [Meeting options](#)

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Signature _____

_____, 20____
Date

Name (Type or Print): _____

Clarke, Victoria

From: Fugh, Justina
Sent: Tuesday, February 02, 2021 7:59 PM
To: Diaz, Catherine; Efron, Brent; Engelman-Lado, Marianne; frey.christopher@epa.gov; Goldberg, Ruby; Kim, Eun; Levy, Maxwell; Nunez, Alejandra; O'Brien, Grant; Sabater, Juan; Waterhouse, Carlton; Michalos, Maria; Conger, Nicholas
Subject: Welcome to the wonderful world of public financial disclosure reporting!
Attachments: Advisory - 278 and 278T reporting obligations January 2021 digitally signed.pdf; reporting periods for 278s.docx; When to Report Transactions on the OGE 278 and Part 7 - November 2020.docx

Hi there,

Welcome to EPA! My name is Justina Fugh, and I'm the director of the EPA Ethics Office. For your initial ethics training on Thursday, February 4 at noon, we'll go over your ethics obligations, which includes submitting the public financial disclosure report. Yes, in your position, you are required by the Ethics in Government Act of 1978 to file the Public Financial Disclosure Report. Using your EPA email address (or for Catie and Eunjung, your personal email addresses), I have now assigned you a new entrant report that my staff will review. Having this information will allow us to assess your conflicts issues and then to draft recusal statements for those of you who need them. Don't worry ... we're here to help you.

DEADLINE FOR SUBMITTING THE REPORT

Technically, your "new entrant" report is due no later than 30 days from your start date at EPA or 3/2/21. If you need additional time, you must contact ethics@epa.gov before your deadline expires. There is a limit to how much additional time we can give you, and we can't grant any extension after the fact.

THE FINANCIAL DISCLOSURE REPORT, OGE-278e

EPA uses an electronic filing system (www.INTEGRITY.gov) for the public financial disclosure reports that is operated and secured by the U.S. Office of Government Ethics (OGE). You are required by law to complete the form, and we will use it to determine whether you have any financial conflicts of interest or other ethics concerns. We have pre-populated the address field with EPA's address because, well, this is a public form and we don't want anyone to know your personal address. We have entered your filer category as Schedule C (even if that might change later) and your filer status as "full time." For help in INTEGRITY, check out the OGE [Public Financial Disclosure Guide](#). The email from INTEGRITY.gov will provide you with specific instructions to log into the federal government's max.gov site, the gateway to INTEGRITY. If you didn't receive your account notification, then check your clutter box for messages from INTEGRITY.gov, or contact ethics@epa.gov.

There are several important things to know about the OGE-278e: (1) it is a public form (which means that anyone can ask for a copy of your form, but Congress repealed the requirement for public posting to the internet); (2) you have to fill it out every year you are in this position; (3) when you leave the position, you will have to file a termination report; and (4) you will be subject to a late filing fee of \$200 for not filing your report timely.

REQUIREMENT TO ANSWER ANY FOLLOW UP QUESTIONS WITHIN 14 DAYS

We will review your report as quickly as possible. If we have any questions, then we will notify you. At that point, you will have 14 calendar days to respond and resubmit your report back to us with any necessary changes.

REPORTING TRANSACTIONS

While you are in this position, you are a public financial disclosure filer who is subject to certain additional requirements of the Ethics In Government Act as amended by the STOCK Act. You will be required to report any purchase, sale or exchange of stocks, bonds, commodities futures or other forms of securities when the amount of the transaction exceeds

\$1000. Use INTEGRITY to disclose reportable transactions *within 30 days of receiving notification of the transaction, but not later than 45 days after the transaction occurs*. You will have to report transactions that occur within brokerage accounts, managed accounts, or other investment vehicles that you own or jointly own with your spouse or another person, as well as transactions of your spouse or dependent children. We will go over this requirement during your initial ethics training, but I've also attached our reminder about late fees and when to report transactions. Remember, you are responsible for reporting transactions, even if you have a managed account, and you will be fined for a tardy periodic transaction report.

YES, YOU CAN BE FINED FOR NOT FILING PROMPTLY

It's worth repeating that you can be fined \$200 for not meeting the submission deadline (and you still have to file that report). PLEASE pay attention to your filing requirements! If you need an extension, then you must ask before your deadline expires. There is a limit to how much additional time you may receive.

HELPFUL HINTS FOR FILLING OUT THE FORM

- This is a wretched and exacting form, so just know that you will have to provide a lot of information.
- You will get three different places to report assets: filer's employment-related assets and income, spouse's employment related assets and income, and other assets and income. You must report assets for yourself, your spouse and any dependent children. We don't really care where you report your assets, just that you do report them all someplace.
- You must include any investment asset that is worth more than \$1000. Include any income from any source that exceeded \$200 during the reporting period (including outside jobs or hobbies, rental income). Include any cash/savings accounts that have more than \$5000.
- Enter each asset separately. Don't lump items together on one line. Be sure to provide the valuation of the asset AND the amount of the income. For assets that aren't mutual funds, you also have to report the type of income (e.g., dividends, cap gains).
- For 401(k) or IRA plans, provide the name of each of the underlying assets. Don't just write "Vanguard IRA" or "mutual fund." You must specify each asset separately and give the valuation but, for these assets in tax deferred instruments, you do not need to provide the amount of income accrued.
- Do not report your federal salary, your spouse's federal salary, or Thrift Savings Plan information
- If you (not your spouse) have any earned income (e.g., outside job, paid pension), you have to report the actual amount of that income.
- If your spouse works outside of federal service, then include your spouse's employer but not the amount of your spouse's salary. If you are not legally married, do not report your significant other's employer.
- Don't forget to include any life insurance policies (whole life or variable life) as well as the underlying investments. Do not report term life insurance.
- If you have nothing to report in a section, be sure to click the "nothing to report" button
- The various parts of the form have different reporting periods, so please consult the attached "reporting periods" chart. Remember to check out the Office of Government Ethics' [Public Financial Disclosure Guide](#) or to contact OGC/Ethics for help.

If you have any questions regarding this message or your obligations, then please contact me or anyone in the OGC Ethics Office at ethics@epa.gov. Good luck with the form and remember, we can answer any questions you may have.

Cheers,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

January 22, 2021

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Timely filing of Public Financial Disclosure and Periodic Transaction Reports

FROM: Justina Fugh **Justina Fugh** Digitally signed by Justina Fugh
Date: 2021.01.22 12:07:49
-05'00'
Alternate Designated Agency Ethics Official

TO: All EPA Political Appointees

In 1978, Congress enacted the Ethics In Government Act, 5 U.S.C. app. to establish the Executive Branch financial disclosure reporting system that requires mandatory public disclosure of financial and employment information of certain officials and their immediate families. Because you occupy a designated position, you are required by this law to file these reports in the electronic system, *INTEGRITY*. As an executive branch employee, you are bound by federal ethics laws and regulations, including prohibitions against financial conflicts of interest and loss of impartiality. Your disclosures allow the Office of General Counsel's Ethics Office (OGC/Ethics) to assist you in identifying and addressing potential or actual conflicts of interest in order to maintain the integrity of the Agency's programs and operations. These reports are publicly available upon request and the reports of certain Presidential Appointees confirmed by the Senate will be posted on the U.S. Office of Government Ethics' website at www.oge.gov.

This memorandum formally informs you that you are required by law to file timely and accurate Public Financial Disclosure Reports (OGE 278e)¹ and Periodic Transaction Reports (OGE 278-Ts).² **Filing a late report will result in a \$200 late filing fee** unless you formally request and receive a waiver of the late fee from me or the Designated Agency Ethics Official (DAEO), Jim Payne, after describing extraordinary circumstances that caused you to file a late report.³ **Unpaid late fees are subject to the Agency's⁴ and the government's debt collection procedures and will be referred for collection if left unpaid after 30 days.**

Please refer to this chart for your filing obligations:

¹ See 5 U.S.C. app. § 101; 5 C.F.R. § 2634.201.

² Pub. L. 112-105 § 11 (STOCK Act).

³ See 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2634.704(a).

⁴ See Resource Management Directive System 2540-03-P2 dated 07/12/2016.

OGE 278e - New Entrant reports	Within 30 days of entering a covered position (either by appointment to a permanent or acting in covered position)
OGE 278e – Incumbent reports	No later than May 15
OGE 278e – Termination reports	No later than 30 days after leaving a covered position (either through reassignment, resignation, or the end of acting in a covered position) (Reports may be submitted within 15 days prior to termination)
OGE 278T – Periodic transaction reports ⁵	The <i>earlier of</i> 30 days after learning of a transaction or 45 days of the transaction taking place.

How to request an extension of the filing deadline:

For good cause (e.g., travel, workload issues, sickness), you may request up to two 45-day extensions. Submit the request by email, including the reason, to ethics@epa.gov **prior to the due date**. Extensions cannot be granted after the due date has passed.

How to request the waiver of a late filing fee:

If *extraordinary circumstances* prevented you from meeting the deadline and OGC/Ethics assessed a late fee, you may request a waiver of the late fee. See 5 C.F.R. § 2634.704. Submit your request in writing to ethics@epa.gov describing the extraordinary circumstances and provide any supporting documentation. Please note that vacations or routine work obligations are not “extraordinary” circumstances. The decision to grant or deny a waiver is at the sole discretion of the DAEO/ADAEO and is final.

Your colleagues in OGC/Ethics are available to provide assistance but it is always your obligation to file your reports timely and accurately. In fact, ethics regulations *require* that we refer individuals to the Department of Justice (DOJ) when there is reasonable cause to believe that they have willfully failed to file a required report or provide the information that the report requires. The current maximum civil penalty is \$56,216.⁶

As public servants, we hope that you will take your ethics obligations seriously. As such, we expect you to make a good faith effort to adhere to the timeliness and completeness requirements of your financial disclosure reporting obligations. If you have any questions, please contact ethics@epa.gov.

ATTACHMENT - *When to Report Transactions on the OGE 278 and OGE 278-T*

⁵ See attached guidance – *When to Report Transactions on the OGE 278 and OGE 278-T*.

⁶ In 2012, OGC/Ethics referred an individual to DOJ for failure to file a termination report despite repeated reminders and entreaties. That individual paid a civil penalty of \$15,000 and still had to file the termination report.

The reporting periods for the OGE Form 278e vary depending on the type of report being filed.

Part	Report Information for the Following Period...			
	Nominee, New Entrant, and Candidate	Annual	Termination	Annual / Termination
1. Filer's Positions Held Outside United States Government	Preceding Two Calendar Years to Filing Date	Preceding Calendar Year to Filing Date	Current Calendar Year to Term Date (in addition, the preceding calendar year if an Annual report for that year is required but has not yet been filed)	Preceding Calendar Year to Term Date
2. Filer's Employment Assets & Income and Retirement Accounts	Preceding Calendar Year to Filing Date ¹	Preceding Calendar Year	Same as Part 1	Same as Part 1
3. Filer's Employment Agreements and Arrangements	As of Filing Date	Preceding Calendar Year to Filing Date	Same as Part 1	Same as Part 1
4. Filer's Sources of Compensation Exceeding \$5,000 in a Year	Preceding Two Calendar Years to Filing Date (n/a for Candidates)	N/A – Leave this Part blank	N/A – Leave this Part blank	N/A – Leave this Part blank
5. Spouse's Employment Assets & Income and Retirement Accounts	Preceding Calendar Year to Filing Date ¹	Preceding Calendar Year	Same as Part 1	Same as Part 1
6. Other Assets and Income	Preceding Calendar Year to Filing Date ¹	Preceding Calendar Year	Same as Part 1	Same as Part 1
7. Transactions	N/A – Leave this Part blank	Preceding Calendar Year ²	Same as Part 1 ²	Same as Part 1 ²
8. Liabilities	Preceding Calendar Year to Filing Date ¹	Preceding Calendar Year	Same as Part 1	Same as Part 1
9. Gifts and Travel Reimbursements	N/A – Leave this Part blank	Preceding Calendar Year ³	Same as Part 1 ³	Same as Part 1 ³

1. For example, if today is March 3, 2019, the reporting period would run from January 1, 2018, to March 3, 2019. When valuing assets and liabilities, the filer may choose any date that is fewer than 31 days before the filing date.

2. Filers do not need to include any period when they were not a public financial disclosure filer or an employee of the United States Government.

3. Filers do not need to include any period when they were not an employee of the United States Government.

Extensions Do Not Change the Reporting Period

The reporting period is tied to a report's original due date and is unaffected by any extensions. For example, a New Entrant report was originally due December 14, 2019. The filer received a 30-day extension and filed January 8, 2020. The Part 2 reporting period would start on January 1, 2018, and end on December 14, 2019.

When to Report Transactions

FILING DEADLINE : 30 days from notification or 45 days from transaction *whichever is earlier*

A \$200 late filing fee penalty is assessed for each late periodic reporting period¹

	Periodic Transaction Report	Annual and/or Termination Report
Investment Assets	Report on the OGE 278-T?	Report on Part 7 of the OGE 278e?
Transactions of \$1,000 or less		
• Any asset in which the transaction amount is \$1,000 or less regardless of the type of asset or who owns the asset	No	No
Investment assets held by you, your spouse, or jointly held		
• Stocks or stock options	Yes	Yes
• Corporate or municipal bonds (exclude U.S. Treasury securities)	Yes	Yes
• Commodity futures	Yes	Yes
• Other investment securities	Yes	Yes
• Assets listed above in your individual, joint, or spousal brokerage accounts managed accounts, IRAs, other retirement accounts, and/or other investment vehicles	Yes	Yes
Your dependent child's investment assets		
• Stocks	Yes	Yes
• Corporate or municipal bonds (exclude U.S. Treasury securities)	Yes	Yes
• commodity futures	Yes	Yes
• other investment securities	Yes	Yes
• Assets listed above in dependent child's <u>own</u> or UGMA brokerage account, IRAs, and/or other investment vehicles	Yes	Yes
Other investment assets irrespective of ownership		
• Real Property	No	Yes ²
• Mutual funds, exchange traded funds, 529 plans, index funds, and/or other "excepted investment funds" ³	No	Yes
• Any asset in which the transaction amount is \$1,000 or less	No	No
• Cash accounts (deposits and/or withdrawals) or certificates of deposit	No	No
• Money market accounts and mutual funds	No	No
• US Treasury securities (e.g., T bills, Treasury bonds, savings bonds)	No	No
• Federal government retirement accounts (e.g., Thrift Savings Plan)	No	No
• Life insurance and annuities	No	No
• Collectibles	No	No
• Assets held within an excepted trust ⁴	No	No
• Transfer of assets between you, your spouse, and your dependent children	No	No

Last updated November 2020

¹ This late fee is automatically imposed by law and is non-negotiable. You may request a waiver of any late filing fee from the Designated Agency Ethics Official or the Alternate DAEO if there are extraordinary circumstances. A fee waiver is at the sole discretion of the DAEO/ADAEO and is not subject to appeal. A filer who has unpaid late fees will be referred to the appropriate federal office or agency for debt collection procedures.

² Do not report the purchase or sale of your personal residence on Part 7 unless you rent it out at any time during the reporting period.

³ To be an excepted investment fund (EIF), the asset must be:

- (a) widely held (more than 100 participants),
- (b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
- (c) publicly traded (or available) or widely diversified.

Managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs) are not excepted investment funds in and of themselves. It may be that individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. But the fact that you have a managed account does not absolve you of your reporting requirements. That account is legally owned by you, and you're responsible for its assets and reporting transactions. If you have questions, contact ethics@epa.gov.

⁴ OGC/Ethics must determine that your trust qualifies as an “excepted trust.” For help, email ethics@epa.gov.

From: [Engelman-Lado, Marianne](#)
To: [Clarke, Victoria](#)
Cc: [Fugh, Justina](#)
Subject: RE: New Litigation TSCA: Center for Environmental Health et al v. Nishida et al (N.D. Cal. Case 3:21-cv-01535)
Date: Thursday, March 11, 2021 10:11:13 PM

I've just touched base with my former client at Waterkeeper Alliance. He, in turn, confirmed with at least one of the North Carolina Keepers and indicated that it was their understanding that I was representing Waterkeeper Alliance and not any of the other Keeper organizations.

FYI.

Best,

Marianne

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Thursday, March 11, 2021 12:16 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: New Litigation TSCA: Center for Environmental Health et al v. Nishida et al (N.D. Cal. Case 3:21-cv-01535)

Hi Marianne,

When Waterkeeper Alliance was your client, you did not counsel its members/affiliates (like Cape Fear Riverkeeper) on their litigations or complaints, or provide other services to these organizations, correct? If so, you could work on this litigation and would not be precluded from working on other specific party matters where the other organizations are a party or represent a party, since they would not be considered your clients, as you did not personally provide services to them.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Sent: Friday, March 05, 2021 12:31 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: FW: New Litigation TSCA: Center for Environmental Health et al v. Nishida et al (N.D. Cal. Case 3:21-cv-01535)

Victoria,

I don't know if we've discussed the network of riverkeepers, but I want to double check that I'm not conflicted from working on matters at EPA involving keeper organizations such as Riverkeeper or Cape Fear Riverkeeper (one of the parties in the matter described below) as a result of their affiliation with Waterkeeper. As you know, I have represented Waterkeeper and am recused from matters before EPA involving Waterkeeper for 2 years. These other keeper organizations are affiliated with Waterkeeper (see <https://waterkeeper.org/who-we-are/>) but are independent nonprofits (see, e.g., <https://capefearriverwatch.org/our-team/>).

Many thanks,

Marianne

From: Schwarz, Stephanie <Schwarz.Stephanie@epa.gov>

Sent: Friday, March 5, 2021 11:01 AM

To: OGC Immediate Office All <OGC_Immediate_Office_All@epa.gov>

Cc: Cole, Joseph E. <cole.josephe@epa.gov>; Kaczmarek, Chris <Kaczmarek.Chris@epa.gov>; Fisher, Bethany <fisher.bethany@epa.gov>

Subject: New Litigation TSCA: Center for Environmental Health et al v. Nishida et al (N.D. Cal. Case 3:21-cv-01535)

Subject: New Litigation TSCA: Center for Environmental Health et al v. Nishida et al (N.D. Cal. Case 3:21-cv-01535)

On March 3, 2021, the Center for Environmental Health, Toxic Free NC, Democracy Green, Clean Cape Fear, Cape Fear River Watch, and The NC Black Alliance filed a complaint in district court with regards to a TSCA section 21 petition that was denied on January 7, 2021. The petition had requested the Agency issue a rule or order under TSCA section 4(a)(1)(A)(i) for testing of 54 Per- and Polyfluoroalkyl Substances (PFAS) manufactured by The Chemours Company (Chemours) at its chemical production facility in Fayetteville, North Carolina. A copy of the complaint is attached.

Stephanie Schwarz

EPA Office of General Counsel

Pesticides and Toxic Substances Law Office

T: 202-564-8496

E: schwarz.stephanie@epa.gov

From: [Engelman-Lado, Marianne](#)
To: [Payne, James \(Jim\)](#)
Cc: [Clarke, Victoria](#); [Packard, Elise](#)
Subject: RE: Recusals for Marianne
Date: Thursday, February 11, 2021 10:44:58 PM

Thanks to all.

Victoria,

I think we've exchanged emails earlier today about meeting early next week. Let's put something on our calendars. I very much want to wrap this up!

Best,

Marianne

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Thursday, February 11, 2021 2:38 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Fwd: Recusals for Marianne

Hi Marianne. Flagging that Victoria has been advising on your recusals, and conservatively advising on your potential recusals pending receiving more information. I understood Victoria to say she believes she could be flexible meeting with you.

Sent from my iPhone

Begin forwarded message:

From: "Clarke, Victoria" <clarke.victoria@epa.gov>
Date: February 11, 2021 at 1:37:42 PM EST
To: "Packard, Elise" <Packard.Elise@epa.gov>
Cc: "Fugh, Justina" <Fugh.Justina@epa.gov>, "Payne, James (Jim)" <payne.james@epa.gov>
Subject: RE: Recusals for Marianne

Hi Elise,

Are you asking if I've shared this email chain with Marianne? Then no, I haven't – some of this is information that I've learned the first time today, and ultimately the analysis is contingent on Marianne providing us a list of her clients, which she knows she has to do because I have been asking her for that list. In so far as does Marianne know that she must recuse from the CARE litigation because of her bar rules, then yes, she absolutely knows that, too, because I told her.

Otherwise, I do want to assure you that OGC Ethics has been diligently informing Marianne of her recusal obligations, since even before she joined the Agency. Unfortunately, we can't provide a lot of specifics *to* her without getting the specifics *from* her. Those specifics include entities that she has fiduciary relationships with (as those are former employers for Pledge purposes) and her former clients. I've asked Marianne if she wants to meet one on one to generate that information but haven't heard back yet. We're going to keep on trying.

Victoria

Victoria Clarke
Attorney-Advisor
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Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Packard, Elise <Packard.Elise@epa.gov>

Sent: Thursday, February 11, 2021 1:05 PM

To: Clarke, Victoria <clarke.victoria@epa.gov>

Subject: RE: Recusals for Marianne

I'm assuming you're telling us stuff here you've already shared with Marianne, but just making sure. Might be good to send this to her so we're all on the same page.

Thanks!

From: Clarke, Victoria <clarke.victoria@epa.gov>

Sent: Thursday, February 11, 2021 11:58 AM

To: Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Fugh, Justina
<Fugh.Justina@epa.gov>

Cc: Dorka, Lilian <Dorka.Lilian@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>;
Temple, Kurt <Temple.Kurt@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>;
Packard, Elise <Packard.Elise@epa.gov>; Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>; Rhodes, Julia <Rhodes.Julia@epa.gov>

Subject: RE: Recusals for Marianne

Hi Ariadne!

Thanks so much for taking these off the Agenda with Marianne. Because we don't have her client list, I think, for now, we have to assume that all of those plaintiffs in the CARE litigation are her clients, so she needs to be recused from the CARE litigation as well as any other specific party matters where those plaintiffs are a party or represent a party. Ultimately, Marianne's recusal statement will detail exactly when her recusal obligations will end with respect to all of her clients. Per the

Pledge, the recusal period ends January 31, 2023 (2 years from Marianne's appointment date).

With respect to new complaints by the plaintiffs in CARE that the court in the Northern District of California has retained jurisdiction over until June 2023, theoretically, totally new Title VI complaints should not be the same particular matter as the complaints in the underlying CARE litigation, which Marianne is recused from under her bar obligations. However, I think we'd have to look at all of the facts of the new complaints, as well as compare Marianne's personal bar obligations along with any bar obligations imposed by the court's location in order for us to make a final determination if Marianne would be able to work on those matters with her former clients once her recusal period wears off. The bar comparison deep dive is not something that I've done yet, though Justina's already started it with MA and NY for me.

With respect to the FOIA from Pork Council, that is definitely something that Marianne should not be involved in. Even though you've described the FOIA as Pork Council seeking EPA's communications with Marianne and her client about *another* lawsuit (one that we didn't know existed, we only knew of the CARE suit, not the REACH suit), it could potentially reveal to Marianne communications that EPA had internally about the lawsuit. She shouldn't be allowed to see those.

Victoria

Victoria Clarke
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EPA Cell: 202-336-9101

From: Goerke, Ariadne <Goerke.Ariadne@epa.gov>

Sent: Thursday, February 11, 2021 6:07 AM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Cc: Clarke, Victoria <clarke.victoria@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>; Rhodes, Julia <Rhodes.Julia@epa.gov>

Subject: Re: Recusals for Marianne

The meeting is at 3 pm today. As I indicated in my note, ECRCO has taken the items that were of potential concern off the agenda for the meeting with Marianne. I understand you are waiting to learn more from her so will not discuss those items unless we are cleared to do so. Thank you Justina and Victoria!

Ariadne

Sent from my iPhone

On Feb 10, 2021, at 10:30 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi,

Victoria has the lead in navigating Marianne's recusals, but I believe she is waiting for a response from Marianne. We can't really help if we don't know the details, either. When is the ECRCO meeting tomorrow?

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Goerke, Ariadne <Goerke.Ariadne@epa.gov>

Sent: Wednesday, February 10, 2021 5:22 PM

To: Fugh, Justina <Fugh.Justina@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>

Cc: Dorka, Lilian <Dorka.Lilian@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>; Rhodes, Julia <Rhodes.Julia@epa.gov>

Subject: FW: Recusals for Marianne

Hi Justina and Victoria,

CRFLO attorneys noted the ECRCO agenda for tomorrow and raised some concerns about whether they should be listed for discussion with Marianne and we could use your wise counsel. Lilian will take these items off of tomorrow's ECRCO agenda, but the issues raised below will need to be resolved at some point soon.

In the Court judgement from the *CARE* case, that Marianne is recused from, the court retained jurisdiction over new complaints filed by any of the plaintiffs listed below. For example, if one of the previous complainants files an administrative complaint and it is not resolved

within 180 days, the CARE attorneys can alert the judge that we are in violation of a court order. We think it would be ideal if the recusal list specified these Plaintiffs so that everyone is clear she is recused from them until the order in CARE expires in June 2023. They are:

Californians for Renewable Energy(CARE)
Ashurst/Bar Smith Community Organization
Citizens for Alternatives to Radioactive Dumping
Saint Francis Prayer Center
Sierra Club – that national organization, not ltd to local chapters
Michael Boyd

Another Title VI complaint on the agenda was filed by a complainant who was a named plaintiff in CARE and, therefore, a former client of Marianne's. Should Marianne be recused from that matter?

A FOIA by the Pork Council is related to the REACH case where Marianne was the attorney for the complainants in that matter. The decision was issued four years ago, but the pending FOIA request seeks communications that EPA had with Marianne and her client. Unsure if that's a conflict issue, but we wanted to flag it.

Thanks for all your help on this.

Ariadne

Ariadne Goerke
Deputy Associate
Civil Rights and Finance Law Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-5471 *office*
202-505-0535 *cell*

From: Dorka, Lilian <Dorka.Lilian@epa.gov>
Sent: Tuesday, February 9, 2021 9:14 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Rhines, Dale <rhines.dale@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>
Subject: RE: Recusals for Marianne

Thanks Justina, please see below. The cases I had in

parentheses were to remind me which ones she had filed – sorry for the confusion. (BTW, I am adding Angie and Ariadne back in because this would affect them as well.)

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 – Cell
Pronouns: she/her/hers

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, February 8, 2021 11:30 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Cc: Rhines, Dale <rhines.dale@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>
Subject: RE: Recusals for Marianne

Lilian,

In order to answer your questions, we need more information from you. Remember, we provide advice about the application of the ethics laws and regulations to fact patterns, but we can't divine the specifics of those fact patterns without your help.

1. Marianne is fully recused because of her own bar obligations in CARE v. EPA. What is the relationship of the "5 underlying complaints" to that case? We need to ascertain and understand whether the complaints you mention are somehow part of the same specific party matter at issue or not. We don't have any information about the relationship among those complaints or what "Beaumont Case" means. Please elucidate. The CARE lawsuit is about ECRCO missing regulatory timeframes on 5 individual complaints. The complainants in those 5 cases (CARE Complaint included) are the plaintiffs in that case. One of those complaints was filed by Earthjustice (Marianne as counsel) and involved an oil refinery in Beaumont Texas. (We resolved that complaint through a resolution agreement w/ TCEQ during the law suit and it is now closed.)
2. Marianne faces three different ethics restrictions, and we try to help her navigate each one. Doing so is entirely dependent

on the facts presented.

- a. She is first bound by her bar restrictions, particularly rules 1.9 and possibly 1.11. In certain jurisdictions, such as MA and NY for example, bar rule 1.11 covers not just former but also current government officials. By contrast, DC bar rule 1.11 covers only former government officials. We find it useful to know to what bar the attorney belongs and where the case in question is being litigated. If she worked personally and substantially on the specific party matter prior to joining EPA, then she is prohibited by her bar rules from “switching sides” and from sharing client secrets. Some bars – but not all – allow for “informed consent” from the former client, and some expand the prohibition to the “same or substantially related specific party matter.” We can’t provide a definitive answer to your question absent specific facts; Got it, thanks.
- b. She is also bound by the Biden ethics pledge she signed, which sets forth a two year “cooling off” period with any former employer or former client she had in the two years preceding joining EPA; and OK, I see how this and the next might apply and answer one of my questions. Thx.
- c. For any former client of hers in the past year that was a state or local government, however, she will be subject to the federal ethics rules and will face a one-year cooling off period instead of two years, starting when she last provided services to that client, not when she started at EPA.

As you can see, we have to navigate a myriad of rules against every fact pattern. That’s why we have asked Marianne to provide us with a list of all of her former clients over the past two years.

3. FOIA requests are indeed specific party matters, and we are aware of one that is pending with EPA from which she will need to be recused. Thanks!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA |
Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal
Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip
code) | phone 202-564-1786 | fax 202-564-1772

From: Dorka, Lilian <Dorka.Lilian@epa.gov>
Sent: Monday, February 08, 2021 5:15 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Rhines, Dale <rhines.dale@epa.gov>; Payne, James (Jim)
<payne.james@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>;
Clarke, Victoria <clarke.victoria@epa.gov>; Talbert-Duarte, Angelia
<talbert-duarte.angelia@epa.gov>; Temple, Kurt
<Temple.Kurt@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: RE: Recusals for Marianne

Hi Justina, thanks for this; really helpful! Marianne was also very involved with Earthjustice at one point, maybe as a client, not sure, and she may have transferred those duties over to Yale or Vermont Law centers? Just wanted to get that on your radar as well.

We have a couple of additional questions we wanted your thoughts on.

1. I see that with respect to *Californians for Renewable Energy v. EPA*, we should not discuss this case with her, etc. There were 5 specific underlying complaints that formed the basis for that litigation related to failure to meet regulatory deadlines. I assume the same restrictions apply to discussions about any of those complaints where she represented complainants, correct (Beaumont Case)?
2. Is Marianne recused from discussing other complaints that she may have filed with us that, although currently closed, involved conclusions with which she disagreed, etc.? Would we also be barred from discussing with her any deliberative process/internal decision making information (such as methodology/strategy) that helped inform our determinations relative to those specific cases (ADEM and Flint/Genessee cases and possibly Select Steel)? Is there a time limit?

3. Finally, what about FOIA requests she may have filed with us? I assume the one that is still pending she may have transferred over to Vermont Law Clinic specifically and the person heading that program now. Any restrictions there as well?

Thanks for your help! Lilian

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 – Cell
Pronouns: she/her/hers

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Sunday, February 7, 2021 11:09 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>
Cc: Rhines, Dale <rhines.dale@epa.gov>; Kaczmarek, Chris <Kaczmarek.Chris@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: Recusals for Marianne

Hi there,

We understand that Marianne Engelman-Lado will be the Deputy General Counsel working closely with your offices. She will have certain recusal issues that will be documented in a recusal statement. Typically, though, we don't draft a recusal statement for a principal until s/he submits the public financial disclosure. So Victoria and I thought to give you a heads up.

Marianne is bound by her bar rules from sharing the confidences of former clients and from switching sides in litigation in which she previously participated or for which she provided supervision. We have identified one case that is currently pending at EPA from which she is recused for the entirety of her tenure at EPA:

- Californians for Renewable Energy v. EPA, case no. 4:15-cv-03292-SBA, N.D. Cal., an APA case regarding Title VI complaints and Agency's failure to meet regulatory deadlines.

Do not brief her on this case nor include it in any of your briefing material to her.

As a political appointee, Marianne is subject to additional recusal obligations with respect to her former employers and her former clients over the past two years. We have identified the following entities as her former employers: Vermont Law School, Yale University, and the Poverty & Race Research Action Council. Under Section 2 of the Biden Ethics Pledge, Marianne is prohibited from working on specific party matters (e.g., litigation, contracts, grants, speaking engagements) in which any of these former employers is a party or represents a party. She may not attend any meetings or have any communications with a former employer unless the communication relates to a particular matter of general applicability and participation in the event is open to all interested parties. This recusal period for these former employers ends after January 31, 2023.

She will be similarly restricted in working on specific party matters with any of her former clients over the past two years. Victoria is working with Marianne to generate that list, which may end up including additional cases for her recusal list. Until we know the names of those clients, the best we can do is provide you with this logic tree:

1. Review the list of cases from which Marianne is recused. As of right now, that list is just one case: *Californians for Renewable Energy v. EPA*, case no. 4:15-cv-03292-SBA, N.D. Cal., an APA case regarding Title VI complaints and Agency's failure to meet regulatory deadlines.
 - a. If the case is on her list, then do not discuss with her
 - b. If the case is not on her list, proceed to step 2.
2. Look to see if any of her former employers (i.e., Vermont Law School, Yale University, and Poverty & Race Research Action Council) or former clients (to be determined) is a party or intervenor
 - a. If yes, then do not discuss with that principal
 - b. If no, then you may discuss with that principal.
3. If the former employer or former client files an *amicus* brief, then
 - a. Ascertain whether Marianne worked on that brief.
 - i. If yes, then do not discuss
 - ii. If not, then do not discuss that brief with Marianne until after January 31, 2023

If you have any questions about these general recusal areas, then please contact Victoria Clarke or me.

Justina

Clarke, Victoria

From: Goerke, Ariadne
Sent: Sunday, February 07, 2021 5:24 PM
To: Clarke, Victoria
Subject: FW: Recusals for Marianne
Attachments: ECF 147 - P's Fee Petition.pdf

Hi Victoria,

I am not forum shopping but have not heard back and know Justina is swamped, so was hoping you might be able to help me with the question I posed on Friday. Can you take a look and let me know your thought?. Angie wants to share our Hot Topics with the IO on Monday and I think it may be prudent to remove the litigation of which Marianne was the litigant, but don't want to presume anything with our new leaders without ethics blessing. Thank you so much!
Ariadne

Ariadne Goerke
Deputy Associate
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202-505-0535 *cell*

From: Goerke, Ariadne
Sent: Friday, February 5, 2021 9:04 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Recusals for Marianne

Hi Justina,

I hope you are hanging in there as you are onboarding and working on matters for dozens of new folks. As we prepare for our first CRFLO reg review next week I was asked to verify that Marianne should not be present for any discussions about litigation of which she was a part (including the CARE litigation attached). **I also wanted to know if we should even have it listed on our Hot Topics as one of many items that we would share?** We wanted to keep it there if Melissa or Dimple attend the reg review but we have no clue as to whether that will work out. It has been a bit chaotic, but I guess that is what transitions are. Thank you, we are trying to be as ethical and supportive as we can!
Ariadne

Ariadne Goerke
Deputy Associate
Civil Rights and Finance Law Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-5471 *office*
202-505-0535 *cell*

From: [Fugh, Justina](#)
To: [Griffo, Shannon](#)
Cc: [Engelman-Lado, Marianne](#); [Clarke, Victoria](#)
Subject: FW: One more potential recusal/conflict
Date: Friday, March 19, 2021 6:24:44 PM

Forgot to cc Shannon.

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Sent: Friday, March 19, 2021 6:11 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: One more potential recusal/conflict

Justina & Victoria,

I also wanted to mention that over the last two years I represented Clean Power Lake County in Illinois on (b) (6), (b) (5)

There is no relevant specific party matter before EPA of which I'm aware but they are involved in ethylene oxide issues and I realized that there is a possibility that they could be a party to a matter during the next two years and that they should be added to my recusal list.

Many thanks.

Best,

Marianne

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Friday, March 19, 2021 6:01 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Griffo, Shannon <Griffo.Shannon@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: virtual introduction

Hi Marianne,

I'm writing to introduce you to another member of Team Ethics, Shannon Griffo. As you know from conversations with Victoria, the Biden ethics pledge places certain restrictions on your ability to interact with former clients. That said, the executive order itself allows for a pledge waiver (to be issued by the OMB Director), but we recently learned that these waivers have delegated to the Designated Agency Ethics Officials in each agency.

As I understand it, your previous association with one client in particular (i.e., NRDC) was

limited to a handful of FOIA cases only. That being the case, I am recommending that Jim sign a pledge waiver for you to work with this one former client on other issues. That would allow you to participate in other specific party matters in which that former client is a party, so long as you didn't otherwise participate. Shannon has experience with drafting pledge waivers, so next week, she'll be in touch with you to confirm details and ask questions. I just didn't want you to be surprised by her reaching out to you.

Cheers,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Clarke, Victoria

From: Fugh, Justina
Sent: Friday, March 19, 2021 6:24 PM
To: Engelman-Lado, Marianne
Cc: Clarke, Victoria
Subject: RE: One more potential recusal/conflict

Hi Marianne,

You know the phrase, "in for a penny, in for a pound," right? (b) (5)

[REDACTED]

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Sent: Friday, March 19, 2021 6:11 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: One more potential recusal/conflict

Justina & Victoria,

I also wanted to mention that over the last two years I represented Clean Power Lake County in Illinois on [REDACTED] There is no relevant specific party matter before EPA of which I'm aware but they are involved in ethylene oxide issues and I realized that there is a possibility that they could be a party to a matter during the next two years and that they should be added to my recusal list.

Many thanks.

Best,

Marianne

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Friday, March 19, 2021 6:01 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Griffo, Shannon <Griffo.Shannon@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: virtual introduction

Hi Marianne,

I'm writing to introduce you to another member of Team Ethics, Shannon Griffo. As you know from conversations with Victoria, the Biden ethics pledge places certain restrictions on your ability to interact with former clients. That said, the executive order itself allows for a pledge waiver (to be issued by the OMB Director), but we recently learned that these waivers have delegated to the Designated Agency Ethics Officials in each agency.

As I understand it, your previous association with one client in particular (i.e., NRDC) was limited to a handful of FOIA cases only. That being the case, I am recommending that Jim sign a pledge waiver for you to work with this one former client on other issues. That would allow you to participate in other specific party matters in which that former client is a party, so long as you didn't otherwise participate. Shannon has experience with drafting pledge waivers, so next week, she'll be in touch with you to confirm details and ask questions. I just didn't want you to be surprised by her reaching out to you.

Cheers,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Clarke, Victoria

From: Marianne Lado (b) (6)
Sent: Wednesday, January 13, 2021 10:40 PM
To: Clarke, Victoria
Subject: Pre-existing speaking engagements
Attachments: 2021-01-13 Ground Up draft w edits.docx

Victoria,

Below please find a list of pre-existing speaking engagements, where I would be speaking in my individual capacity:

1. As we discussed, it'll be hard for me to make a clean break with my teaching responsibilities precisely on January 20th. We can talk more about this, but I currently teach two classes at the Yale School of Public Health/Yale School of Environment and Vermont Law School. I'm currently trying to develop a transition plan that can be implemented asap.
2. January taping for subsequent airing: podcast with Environmental & Energy Law Program at Harvard Law School, focusing on civil rights enforcement in the EJ context.
3. Thursday, January 28th, Temple B'Nai Torah, panel entitled, "Relating to our planet: Environmental Justice, Shmita, and Making Positive Change," a part of the Big Bold Jewish Climate Festival, (<https://www.jewishclimatefest.org/>).
4. Tuesday, Feb. 2 guest lecture in Resilience and Sustainability class at Vermont Law School.
5. Wednesday, Feb. 10 in the evening: guest lecture at UCLA Environmental Justice class.
6. Saturday, Feb. 27: Community Visions for Environmental Justice Organizing conference, a joint effort between Duke's Environmental Law & Policy Clinic, Howard Law School's Environmental Justice Center, Vermont Law School's Environmental Justice Clinic and Environmental Justice Law Society, and the Yale School of the Environment. I'm scheduled to moderate a panel discussed on "Seeking Justice Through Policy: Environmental Justice Legislation and Executive Action."
7. Wednesday, March 10, Texas Environmental Law Journal Symposium, Proving Discrimination in Title VI Challenges to Environmental Programs, at UT Austin.
8. Thursday, March 25th, [Northeast Summit for a Sustainable Built Environment](#) (NESSBE), talk focused on equity work with the GC3 in Connecticut.

Attached please also find a draft of the article to be published this year in an environmental law journal.

Please let me know if any of these raise red flags or how I should handle them.

Thanks,

Marianne

Marianne Engelman Lado

Clarke, Victoria

From: Engelman-Lado, Marianne
Sent: Friday, February 05, 2021 6:33 PM
To: Clarke, Victoria
Cc: Fugh, Justina
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

This is extremely helpful and I want to take a closer look. Sorry I wasn't able to call you back: one thing led to another this afternoon, but I'd like to reconnect next week.

Thanks again,

Marianne

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Friday, February 5, 2021 5:37 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Mariannel!

It was great to speak with you this afternoon – even though our conversation got cut short! Before it leaves my mind, I want to think through the example of the NRDC FOIA Request, so that we can see the flow of the restrictions and hopefully make some logical sense of them by seeing them in action.

The basis: NRDC hired you as their attorney to work on a FOIA Request. I believe it was EPA-2021-000375?

- Under your bar rules:
 - As an attorney, you have bar rules, and those bar rules say you have to protect client confidences. Absent the ability to ask for and receive informed consent from a former client, you are not allowed to work on the same or a substantially related matter at EPA that you worked for on behalf of someone else. From what I understand, there was an understood and contractual attorney-client relationship between you and NRDC for the purposes of filing EPA-2021-000375 (and similar ones on a quarterly basis) and litigating it, if necessary. As such, you are barred from working on EPA-2021-000375 at EPA, unless you could ask for and obtain informed consent from NRDC as your former client. I imagine that this bar would include not just the FOIA itself, but also any appeal regarding that FOIA, as the appeal is substantially related to the actual FOIA request, but for that analysis, I'd have to refer you to your bar counsel.
- Under the Biden Pledge:
 - During the time period of January 31, 2021 (your appointment date) to January 31, 2023 (your appointment date + 2 years under the Pledge):
 - You may not engage in any specific party matter (litigation, contract, FOIA, FOIA appeal, etc.) where NRDC is a party or represents a party. This is because NRDC was your client within the previous two years, as they hired you as their attorney.

- NOTE 1: This doesn't apply to matters of general applicability, such as rulemakings. Let's say, for example, that NRDC files a lawsuit successfully challenging a rule. You are *still* allowed to work on the rule, even if it was the subject of NRDC's lawsuit. You are just not allowed to work on the litigation about the rule with NRDC or have case strategy discussions about the NRDC litigation.
- NOTE 2: This also doesn't apply to meetings with your former clients that are 1) about matters of general applicability and 2) open to all interested parties. You'll want to work with OGC Ethics closely about if a meeting fits these criteria.
- You may not work on EPA-2021-000375 or substantially related matters to EPA-2021-000375.
 - First, your bar rules would prohibit it unless you were allowed to obtain informed consent from NRDC.
 - Second, even if you could and did obtain informed consent from NRDC, a FOIA request is still a specific party matter. NRDC is a former client and the two-year cooling off period for specific party matters with former clients under the Pledge still hasn't expired.
- After January 31, 2023 (past the 2-year cooling off period under the Pledge):
 - You may engage in a specific party matter where NRDC is a party or represents a party.
 - You may not work on EPA-2021-000375 or substantially related matters to EPA-2021-000375 if you could not/did not obtain informed consent from NRDC.
 - You may work on EPA-2021-000375 or substantially related matters to EPA-2021-000375 if you could and did obtain informed consent from NRDC. You can work on it after January 31, 2023 because the cooling off period for former clients on specific party matters under the Pledge has expired and the FOIA is considered a specific party matter.

Your bar rules aside, I know the Pledge restriction may seem broad – a two-year ban from anything involving NRDC *just* because of a FOIA request? But the Pledge is the Pledge, and the restriction is intended to show the public that you're only working in their interests and not the interests of a former employer or client. For reference, here's the full definition of 'former client' at Section 2(l) (emphasis mine):

(l) "Former client" is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, **but excluding instances where the service provided was limited to speeches or similar appearances. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services.**

There are only two exceptions – speeches or similar appearances, or clients of your former employer that you did not personally provide services to. The Office of Government Ethics in a previous advisory opinion did discuss what a "similar appearance" might be. Office of Government Ethics Advisory [DO-09-011](#) (3/26/09) page 5, which applies to Executive Order 13989 pursuant to OGE Legal Advisory [LA-21-03](#) (1/22/21) says:

"In addition to excluding all activities that consist merely of speaking engagements, this provision is intended to exclude other kinds of discrete, short-term engagements, including certain de minimis consulting activities. Essentially, the Pledge is not intended to require a two-year recusal based on activities so insubstantial that they

are not likely to engender the kind of lingering affinity and mixed loyalties at which the Executive Order is directed. The exclusion for speaking and similar engagements was added to emphasize that the provision focuses on services that involved a significant working relationship with a former client. Therefore, the exclusion is not limited to speeches and speech-like activities (such as serving on a seminar panel or discussion forum), but includes other activities that similarly involve a brief, one-time service with little or no ongoing attachment or obligation.

In order to determine whether any services were de minimis, ethics officials will need to consider the totality of the circumstances, including the following factors:

- the amount of time devoted;
- the presence or absence of an ongoing contractual relationship or agreement;
- the nature of the services (e.g., whether they involved any representational services or other fiduciary duties); and
- the nature of compensation (e.g., one-time fee versus a retainer fee).

For example, the recusal obligation of Pledge paragraph 2 would not apply to an appointee who had provided consulting services on a technical or scientific issue, for three hours on a single day, pursuant to an informal oral agreement, with no representational or fiduciary relationship. [FN7] On the other hand, an appointee who had an ongoing contractual relationship to provide similar services as needed over the course of several months would be covered. In closer cases, OGE believes ethics officials should err on the side of coverage, with the understanding that waivers, under section 3 of the Order, remain an option in appropriate cases.

Speaking candidly, I would be hard pressed to say that providing attorney services would fall into the category of a de minimis activity. But I'm always happy to think through specific instances with you and Justina if you have them.

I hope that helps explain what the restrictions mean in practice and why they're in place. I'm about to sign off in the next fifteen minutes, but if you want to talk more on Monday or sometime next week about this, let me know!

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Sent: Friday, February 05, 2021 3:45 PM

To: Clarke, Victoria <clarke.victoria@epa.gov>

Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Thanks. This is very helpful, and my plan is to pull all of the info together this weekend.

Best,

Marianne

From: Clarke, Victoria <clarke.victoria@epa.gov>

Sent: Friday, February 5, 2021 3:04 PM

To: Marianne Lado (b) (6)

Cc: Fugh, Justina <Fugh.Justina@epa.gov>; Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Subject: FW: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Marianne!

I am not sure if you have access to your EPA email address yet, so I want to make sure you receive the below message. I know you had some questions about former employers and clients and associated restrictions following the ethics briefing on Thursday, so hopefully I can help address those and also clarify what we need from you.

This email is going to refer to specific party matters and matters of general applicability, both of which make up the term “particular matters.” These terms can be confusing and get twisted around, so here’s how we think of them in the Federal ethics context.

- Specific party matters are proceedings that affect the legal rights of parties, or are isolatable transactions (or related sets of transactions) between identified parties. Specific party matters are things like investigations, applications, contracts, claims, judicial proceedings, litigations, etc.
- Matters of general applicability are broader and instead focus on the interests of a discrete and identifiable class of persons, such as an industry or profession. Matters of general applicability are things like rulemaking, or policy making.

Restrictions based on your bar rules

- We need: Confirmation that OGC Ethics has a complete list of all your specific party matters pending with EPA.

Based on your bar rules, you must protect the confidences of your former clients. You are permanently restricted from working on specific party matters (litigations, contracts, enforcement actions, etc.) that are the same as or substantially related to specific party matters that you worked on personally and substantially while in private practice – unless your bar permits you to obtain informed consent and you notify us in OGC/Ethics. You are not allowed to switch sides and your recusal statement will list out all the cases that you are barred from working on while at EPA.

In terms of what makes up the universe of these specific party matters, they are typically lawsuits. However, if you represented someone as their attorney for another type of specific party matter, like maybe an administrative appeal or a formal investigation rather than a lawsuit, then we would want to know about that, too.

With respect to what are your specific party matters, this is easy for solo practitioners, because it is those specific party matters where you personally represented someone as counsel or co-counsel. However, like a supervisory attorney at a law firm or a nonprofit, you’re in the unique position as coming from a law school with an environmental law clinic that you had some role in overseeing. You’re not responsible for all of the lawsuits and all of the clients at all of the clinics at Vermont Law, just like someone from a law firm is not responsible for all of the lawsuits or all of the clients that their firm represents. However, if you worked personally and substantially on a case, or you supervised someone, we would want you to include that in your list of cases.

Currently, we have your CARE v. EPA case on this list. But based on the information above, is there any other case that we should be including? Anything from PRRAC?

Restrictions based on Section 1, Paragraph 2 of the Biden Pledge

- We need: An explanation about board duties with certain entities in the past 2 years.
- We need: A list of your former clients since January 31, 2019.

Since we first had our ethics discussion all those weeks ago, we now know that there is an Ethics Pledge. The Pledge dictates that for 2 years from the date of your appointment to EPA (after Jan. 31, 2023), you will not participate in any specific party matter that is directly and substantially related to a former employer or former client that you had in the 2 years preceding your appointment (Jan. 31, 2019).

Based on your resume, we know that your former employers since January 31, 2019 are Vermont Law School, Yale University, and Poverty & Race Research Action Council. So, until after January 31, 2023, we know that you can't work on a case, or a litigation, or have a speaking engagement with these three entities. This also includes meetings with your former employers, too – unless the meeting is about a matter of general applicability and participation in the meeting is open to all interested parties.

However, for the purposes of the Ethics Pledge, a former employer is not just someone who pays you. A former employer can also include an organization where you served in a fiduciary role (e.g., board of directors, trustee) and had fiduciary responsibilities, even if you did not receive compensation for that work. You have several organizations listed on your resume that are within the 2 year time frame, and I will need to know more about your duties with them in order to determine if they fall into the category of a former employer because of any fiduciary responsibilities:

- Co-Chair, Equity and Environmental Justice Working Group, Governor's Council on Climate Change (GC3), Connecticut (January 2020 – present)
- Board Member, WE ACT for Environmental Justice (2013 – present; Interim Chair 2020 – present; chair, Governance Committee and secretary, 2018 - 2020)
- Co-Lead, Policy & Legal Hub; Member, Network Council; Member, Executive Committee, Cancer Free Economy Network (various roles from founding in 2014 -present)
- Board Member, African American Policy Forum (2010 – 2019)
- Board Member, Center for Public Representation (2009 – present)

For the GC3 co-chairship, this looks to be a component of a state, so you may only be subject to the one-year cooling off period under the impartiality regulations, since state and local governments are excluded from the Pledge. I still want to get an understanding of what you did, however.

Additionally, we need to know who are all the clients that you had since January 31, 2019, because the same restrictions are going to apply to them as it does to your former employers. As I explained in the restrictions based on your bar obligations – we're only interested in the clients that you took on personally or had some level of supervision over. During the ethics briefing on Thursday, you had raised the example of Vermont Law's energy clinic and that you had nothing to do with the clinic – provided that you truly didn't have any involvement in the clinic and didn't supervise any students and their cases within it, then you would not include any of the energy clinic's clients in your list, just as you wouldn't include their lawsuits. For the purposes of the pledge, a client is someone that you served as an agent, attorney, or consultant for.

In putting together your list of clients, it would be helpful for me if you could note who is likely to have an issue that could arise before the Agency. Given your work in environmental justice, this might be everyone, in which case just let me know that. Also let me know if you have any clients with whom you have signed a confidentiality

agreement. We do not need to list those confidential clients by name, but we do need to make a note on your recusal statement that you have confidential clients but are abiding by your Pledge restrictions.

I hope that this email is helpful in trying to sort your obligations under the Pledge. It can be terribly confusing, but you're certainly not in it alone and I'm happy to chat with you more as we think through this.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Clarke, Victoria
Sent: Tuesday, February 02, 2021 11:43 AM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: FW: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Marianne and Happy Tuesday!

OGC Ethics plans to send a message similar to the one below to our HQ and Regional Counsels. From our prior discussions, we already know of your involvement in CARE v. EPA, 4:15-cv-03292-SBA (NDCA), as well as your FOIA request, EPA-2021-000375. However, for the purposes of your obligations under the Biden Pledge, we need to know the names of clients that you acted as agent, attorney, or consultant for in the two years preceding your appointment – particularly those that have or may have environmental issues that could arise before EPA. Is this something that you can get to us?

Thank you!
Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi there,

As you might expect, the OGC/Ethics Office is cheerfully up to our eyeballs in ethics issues for our incoming appointees. Not only are we thinking, as we always do, about financial conflicts of interest, but we are also weighing impartiality concerns with former employers and former clients, bar obligations and now an executive order on ethics commitments. We will be drafting recusal statements, but we typically wait until after we have a chance to review the financial disclosure reports. As many of you also file that wretched report, you know how much work that entails. So, before we can distribute signed recusal statements, here's how to navigate the likely recusal issues for Melissa Hoffer and Dimple Chaudhary.

MELISSA HOFFER

- Melissa is bound by her bar restrictions from sharing the confidences of her former client, the Commonwealth of Massachusetts, and from switching sides in litigation in which she previously participated or for which she provided supervision. With the attached impartiality determination, however, I authorized her to participate in making *policy* decisions about that litigation, such as whether or not to stay the proceedings. That impartiality determination included the list of cases from which she is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.
- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:
Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	<i>Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA</i> , Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	<i>Labor Council for Latin America, NRDC, et al. v. EPA</i> , Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	<i>NRDC v. Wheeler</i> , Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	<i>Walters v. Flint, EPA, et al.</i> , Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Clarke, Victoria

From: Engelman-Lado, Marianne
Sent: Wednesday, March 03, 2021 9:38 AM
To: Fisher, Bethany
Cc: OGC Immediate Office Support; Payne, James (Jim); Fugh, Justina; Cole, Joseph E.; Anderson, Steve; Thaler, Elizabeth; DePasquale, Daniel; Rebersak, Shannon
Subject: RE: Background paper for tomorrow's meeting on (b) (5)

Thanks.

From: Fisher, Bethany <fisher.bethany@epa.gov>
Sent: Wednesday, March 3, 2021 9:27 AM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Anderson, Steve <Anderson.Steve@epa.gov>; Thaler, Elizabeth <thaler.elizabeth@epa.gov>; DePasquale, Daniel <depasquale.daniel@epa.gov>; Rebersak, Shannon <rebersak.shannon@epa.gov>
Subject: RE: Background paper for tomorrow's meeting (b) (5)

Good morning all,

Just to be extra clear that we won't be discussing any specific party matter from which Marianne is recused, I'd like to amend the second paragraph of my email below:

Please note that we will not discuss with you any specific party matter from which you are recused under your bar or pledge restrictions. The only specific party matter that we will discuss with you in the context of the TSCA risk evaluations is the asbestos risk evaluation case - *ADAO et al. v. EPA et al.* (9th Cir. No. 21-70160) – from which you are not recused.

We look forward to discussing this soon!

Bethany Fisher
EPA Office of General Counsel
Pesticides and Toxic Substances Law Office
202-564-2672

From: Fisher, Bethany
Sent: Tuesday, March 02, 2021 4:22 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Anderson, Steve <Anderson.Steve@epa.gov>; Thaler, Elizabeth <thaler.elizabeth@epa.gov>; DePasquale, Daniel <depasquale.daniel@epa.gov>; Rebersak, Shannon <rebersak.shannon@epa.gov>
Subject: Background paper for tomorrow's meeting (b) (5)

Good afternoon Marianne,

Attached please find a background document to help inform tomorrow morning's meeting (b) (5)

(b) (5)

(b) (5)

We look forward to speaking with you tomorrow.

Bethany Fisher
EPA Office of General Counsel
Pesticides and Toxic Substances Law Office
202-564-2672

Clarke, Victoria

From: Engelman-Lado, Marianne
Sent: Thursday, April 01, 2021 5:59 PM
To: Clarke, Victoria
Cc: Fugh, Justina; Griffo, Shannon
Subject: RE: Draft Pledge Waiver

Thanks.

(b) (5)

Many thanks.

Best,

Marianne

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Thursday, April 1, 2021 5:45 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Draft Pledge Waiver

Hi Marianne,

It was great to speak with you earlier. Given our conversation and my follow-up discussion with Justina (b) (5)

(b) (5)

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Sent: Thursday, April 01, 2021 4:25 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Draft Pledge Waiver

Shannon & Team,

Thanks so much for drafting this.

Attached please find a version with a few answers to your questions and additional information.

I had an overall comment, which I discussed with Victoria.

Many thanks,

Marianne

From: Clarke, Victoria <clarke.victoria@epa.gov>

Sent: Monday, March 29, 2021 2:25 PM

To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Cc: Fugh, Justina <Fugh.Justina@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>

Subject: Draft Pledge Waiver

Hi Marianne,

Happy Monday! Shannon prepared your draft pledge waiver (b) (5)

Before we can submit this to the White House for its review, we need you to take a look at the draft. In addition to reviewing the pledge waiver for factual accuracy, there are a few comments in the document that we need you to address.

Shannon is taking well-deserved leave this week, so you can reach out to Justina – or to me! – if you have any questions.

Thank you!
Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

Clarke, Victoria

From: Engelman-Lado, Marianne
Sent: Friday, March 12, 2021 1:12 PM
To: Clarke, Victoria
Subject: RE: Ethics Question

Thanks.

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Friday, March 12, 2021 12:33 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Subject: RE: Ethics Question

Hi Marianne,

Provided that you aren't influencing the school's or your parents' decisions to invite the Administrator or extending the invitation on their behalf, there should not be an ethics concern for you. But thank you for checking in!

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Sent: Thursday, March 11, 2021 3:28 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: Ethics Question

Both my parents and faculty have reached out to me before the invitation has been extended to make sure it doesn't raise concerns. Their inquiries triggered my email to you.

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Thursday, March 11, 2021 2:09 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Subject: RE: Ethics Question

Hi Marianne,

So that I understand, you weren't consulted about inviting the Administrator at all, correct? It was the faculty that selected, after consultation with your family?

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Sent: Thursday, March 11, 2021 1:31 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: Ethics Question

Victoria,

A number of years ago I taught at the School of Public Affairs at Baruch College, which provided opportunity to my family a generation earlier. After I left, (b) (6) for what is called the Ackerman Lecture for Equality and Justice, a semi-annual lecture intended to deepen conversation on campus about issues of equality and justice. Although the speakers are chosen by faculty, they consult with my family in the selection process and the date of the lecture.

I just heard from faculty at the school that, partly as a result of their connection with Maria Michalos, an alum who is now working as a speechwriter for Admin. Regan, they would like to invite the Administrator to deliver the Ackerman lecture. I just wanted to make sure this doesn't present any conflict for me.

Many thanks,

Marianne

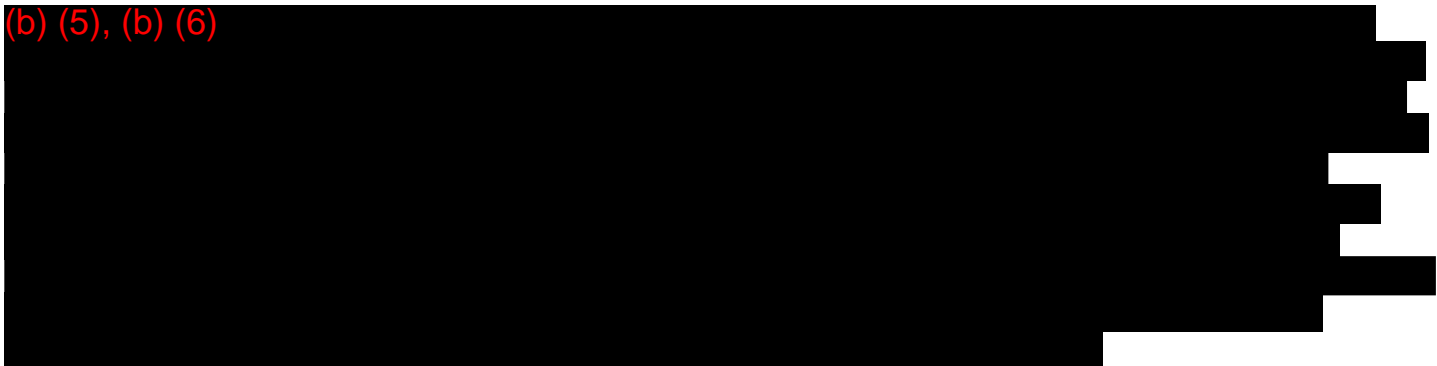
Clarke, Victoria

From: Engelman-Lado, Marianne
Sent: Wednesday, March 24, 2021 2:38 PM
To: Griffo, Shannon
Cc: Fugh, Justina; Clarke, Victoria
Subject: RE: Ethics questions - FOIA work

Shannon,

Thanks for the email.

(b) (5), (b) (6)



Hope this is helpful.

Please let me know if I can provide additional info.

Best,

Marianne

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Wednesday, March 24, 2021 1:35 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: Ethics questions - FOIA work

Hi Marianne,

Apologies for the delay in responding as I was out of the office the last two days. I saw your other email, but I wanted to first get you my questions regarding your FOIA work. (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

I think that's it for now. I may have additional questions but that'll help me fill in some gaps.

Thanks!
Shannon

Shannon Griffio
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Sent: Friday, March 19, 2021 6:04 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Griffio, Shannon <Griffo.Shannon@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: virtual introduction

Justina,

Many thanks for reaching out. I appreciate the email and hope you have a terrific weekend.

Shannon,

I'm looking forward to hearing from you next week.

Best to everyone,

Marianne

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Friday, March 19, 2021 6:01 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Cc: Griffo, Shannon <Griffo.Shannon@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>

Subject: virtual introduction

Hi Marianne,

I'm writing to introduce you to another member of Team Ethics, Shannon Griffo. As you know from conversations with Victoria, the Biden ethics pledge places certain restrictions on your ability to interact with former clients. That said, the executive order itself allows for a pledge waiver (to be issued by the OMB Director), but we recently learned that these waivers have delegated to the Designated Agency Ethics Officials in each agency.

As I understand it, your previous association with one client in particular (i.e., NRDC) was limited to a handful of FOIA cases only. That being the case, I am recommending that Jim sign a pledge waiver for you to work with this one former client on other issues. That would allow you to participate in other specific party matters in which that former client is a party, so long as you didn't otherwise participate. Shannon has experience with drafting pledge waivers, so next week, she'll be in touch with you to confirm details and ask questions. I just didn't want you to be surprised by her reaching out to you.

Cheers,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Clarke, Victoria

From: Engelman-Lado, Marianne
Sent: Friday, April 09, 2021 8:42 AM
To: Fugh, Justina; Hamilton, Lindsay
Cc: Clarke, Victoria; Conrad, Daniel
Subject: RE: Follow up from NBC News

Thanks. I'll delete the email.

I'm cc'ing Dan, who is responding to the reporter and can provide my epa email for this purpose.

Many thanks,

Marianne

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, April 8, 2021 9:42 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>; Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: FW: Follow up from NBC News

Hi there,

I'm slowly slogging through my emails today. Let me see if I can sort through the ethics-related issues:

- The reporter wrote to both Marianne's official and personal email addresses –
 - Marianne should delete the email from her personal email address as extraneous. And someone (doesn't have to be Marianne) should contact the reporter to request that he cease using a personal email address for Marianne when contacting her in her official EPA capacity. As a federal employee, she is obliged to keep her official duty separate from any personal activity, and receiving emails at her personal email address is confusing; and
- Marianne speaking on behalf of the Agency on aviation fuel –
 - If Marianne had previously been involved in related litigation, she needs to be mindful of her bar rules and her obligation to keep client confidences. (b) (5)

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Marianne Lado (b) (6)
Sent: Thursday, April 08, 2021 8:28 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>; hamilton.lindsay@epa.gov
Cc: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Subject: FW: Follow up from NBC News

Justina & Lindsay,

I received the email below as a cc at my personal email address related to an inquiry from NBC News. The reporter is interested in information about lead in aviation fuel (avgas), an issue I litigated and otherwise worked on years ago when I was at Earthjustice. It is also the subject of litigation brought more recently by the environmental clinic at Berkeley and Friends of the Earth. I am not involved in the case at EPA.

I wanted to raise this to your attention.

Thanks,

Marianne

From: "Farivar, Cyrus (NBCUniversal)" <Cyrus.Farivar@nbcuni.com>
Date: Thursday, April 8, 2021 at 7:31 AM
To: "Jones.Enesta@epa.gov" <Jones.Enesta@epa.gov>
Cc: "hoyer.marion@epa.gov" <hoyer.marion@epa.gov>, "lado.marianne@epa.gov" <lado.marianne@epa.gov>, Marianne Lado (b) (6), "Miranda1, Leticia (NBCUniversal)" (b) (6)
Subject: Follow up from NBC News

Hello Ms. Jones:

Cyrus Farivar here again from NBC News.

I'm working with my colleague Leticia on our story about aviation fuel (avgas) and had two quick questions for you.

1. We understand that Marianne Engelman Lado joined EPA in Feb 2021 as an attorney. As you may know, she is very knowledgeable on this issue and has been involved in litigation and activism against EPA from her days at Earthjustice (https://earthjustice.org/our_work/cases/2012/u-s-needs-to-get-the-lead-out-of-aviation-fuel). We'd love to know what her hiring means for the future of avgas regulation and if she would be available to speak to us.
2. On that note, we located a 2015 letter from EPA to Ms. Lado in which EPA said that it would issue a "final endangerment finding" re avgas in 2018. (<https://www.documentcloud.org/documents/20598031-ltr-response-av-ld-foe-psr-oaw-2015-1-230>). However, according to the Jan 2021 National Academy of Sciences report on this issue, EPA still has not done so. (<https://www.documentcloud.org/documents/20475932-26050#document/p33/a2021163>). Why has there been this delay and will the agency be issuing such a determination in the near future?

(b) (6)
In the meantime, Leticia can answer any questions you may have, or we can pick this up again next week.

Best,

-C

--

Cyrus Farivar

"suh-ROOS FAR-ih-var"

Investigative Tech Reporter

NBC News

(b) (6)

Signal/WhatsApp-friendly

Twitter: @cfarivar

Submit files anonymously via [SecureDrop](#).

NOTE: All emails for journalistic purposes are presumed to be on the record unless and until a mutually accepted negotiation of ground rules has successfully concluded. Any unilateral declaration by recipient of this email that a conversation is on background or off the record will not be honored.

Clarke, Victoria

From: Engelman-Lado, Marianne
Sent: Wednesday, April 14, 2021 9:50 AM
To: Fugh, Justina; Payne, James (Jim)
Subject: RE: for signature, please

Thanks again!

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Wednesday, April 14, 2021 9:12 AM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: for signature, please

Hi,
No waiting period *after* signature, but this “waiting period *before* signature” is why I didn’t tell you last night. I was expecting/hoping that Jim would sign it so that I could send it to you and PTSLO as a done deal.

Jim – the waiver I sent you last night is set up already for your digital signature. Can you please sign it?
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Sent: Wednesday, April 14, 2021 8:17 AM
To: Payne, James (Jim) <payne.james@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: for signature, please

Is there a waiting period before the waiver goes into effect or does it go into effect once signed?

Thanks,

Marianne

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Tuesday, April 13, 2021 10:53 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Fwd: for signature, please

FYI, the White House approved the proposed pledge waiver for NRDC.

Sent from my iPhone

Begin forwarded message:

From: "Fugh, Justina" <Fugh.Justina@epa.gov>
Date: April 13, 2021 at 10:33:20 PM EDT
To: "Payne, James (Jim)" <payne.james@epa.gov>
Subject: for signature, please

Hi Jim,

We got confirmation tonight that the White House concurs in EPA's granting a limited waiver for Marianne Engelman-Lado. Under this waiver, she will be permitted to work on specific party matters in which her former client, NRDC, is a party or represents a party so long as she did not previously work on that same matter. As we've discussed, her prior work with NRDC focused only on a handful of FOIA cases in the Title VI context. (b) (5)

Once you sign, I will distribute it appropriately, including to NFO that has a lovely place set aside to post it within the 10 day timeframe. And I'll be sure to send the signed waiver along to OGE.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Clarke, Victoria

From: Engelman-Lado, Marianne
Sent: Monday, February 22, 2021 10:28 AM
To: Payne, James (Jim); Keith, Jennie; Conrad, Daniel; Fugh, Justina
Cc: Clarke, Victoria
Subject: RE: Marianne Speaking at ELI Event?

I've got an 11 am, so perhaps at this point it would be good to find another time? My cell is (b) (6)

Best,

Marianne

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Monday, February 22, 2021 10:27 AM
To: Keith, Jennie <Keith.Jennie@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: Marianne Speaking at ELI Event?

Thanks everyone. Jennie, Marianne – can we check in now? Marianne, what cell number should we use for you? Jim (b) (6) cell

From: Keith, Jennie <Keith.Jennie@epa.gov>
Sent: Monday, February 22, 2021 9:56 AM
To: Conrad, Daniel <conrad.daniel@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: Marianne Speaking at ELI Event?

Morning Dan,

Thanks for flagging this. Yes, Victoria Clarke (who is doing the ethics on-boarding of Marianne – which includes financial disclosure form, identifying recusal issues, other ethics counseling issues such as identifying these speaking engagements she had committed to prior to government service) has raised this specific event with me. The status of this, as far as I know, was that Marianne hadn't yet accepted the invitation pending our ethics advice. We have been coordinating with her on this request, but I don't think we yet know Marianne's answers to our questions which would then allow us to proceed with analyzing this and providing appropriate ethics advice. Hopefully, Victoria and I should have this settled soon, given that the event is next week. I'm happy that ELI has her an "invited." There are no ethics issues with that.

Thanks!
Jennie for OGC/Ethics

From: Conrad, Daniel <conrad.daniel@epa.gov>
Sent: Monday, February 22, 2021 8:54 AM

To: Payne, James (Jim) <payne.james@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>

Subject: Marianne Speaking at ELI Event?

All,

See below that Marianne is listed as a speaker (in former capacity) at this event. I can't recall if anything was cleared. If so I didn't coordinate the standard form or talk with Jennie about it, but since it was already established maybe it took a different path or she went directly to one of you all? Note it also says "(invited)" next to her name so maybe she hasn't confirmed, but very odd to list someone who hasn't accepted on your advertisement. Thanks

-Dan

From: Schramm, Daniel <Schramm.Daniel@epa.gov>

Sent: Wednesday, February 17, 2021 7:43 PM

To: OGC Anti-Racism Advisory Committee <OGC_Anti-Racism_Advisory_Committee@epa.gov>

Subject: FW: Keeping To Our Word: Accountability to Racial Justice in the Environmental Sector

Hi all, I thought this event may be of interest to this group.

From: Environmental Law Institute <law@eli.org>

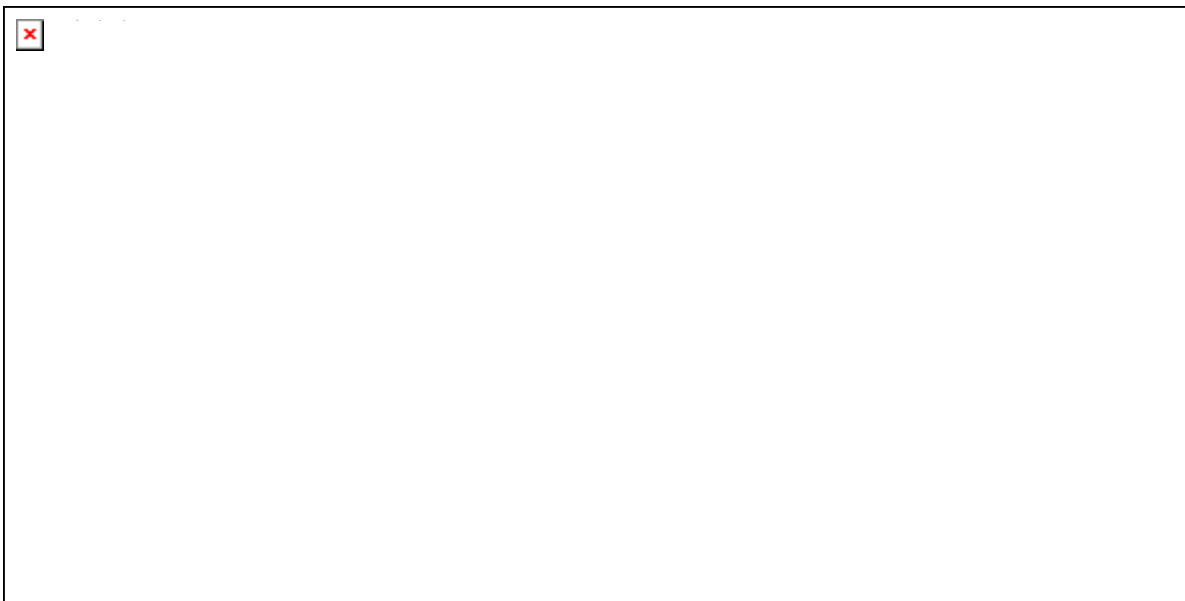
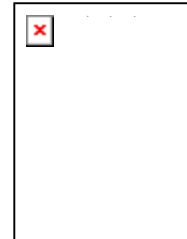
Sent: Wednesday, February 17, 2021 3:43 PM

To: Schramm, Daniel <Schramm.Daniel@epa.gov>

Subject: Keeping To Our Word: Accountability to Racial Justice in the Environmental Sector

Keeping To Our Word: Accountability to Racial Justice in the Environmental Sector

March 2, 2021, 12:00 pm - 1:30 pm ET

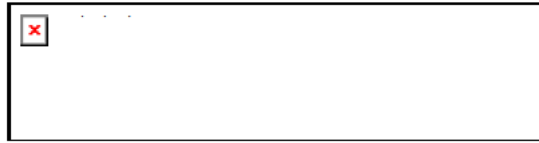


JOIN US

Webinar only

REGISTRATION

This event is free and open to the public but you must register by **February 26th**.



An ELI Public Webinar

In the wake of last summer's racial reckoning, a multitude of companies, non-profit organizations, and others have released statements promoting racial justice. Organizations that had been previously silent on issues stemming from and connected to racial injustice began speaking out about the importance of anti-racism and structural change.

These statements of solidarity became nearly ubiquitous in the environmental sector. Traditionally white-led environmental organizations advocated for justice and equity by explicitly condemning white supremacy, police brutality, and environmental racism. Although this shift is commendable and necessary, demonstrated and quantifiable actions are required to underpin such statements.

What actions can organizations in the environmental sector take in order to actualize the principles they have vocally supported? How can organizations take accountability for and begin rectifying historic complicity in the exclusion of black, indigenous, and other people of color from their staff and leadership? How do we evaluate the success of Diversity, Equity, and Inclusion efforts? How can organizations collaborate with grassroots and community leaders to strengthen this shared work towards a more equitable, just, and environmentally sound future? Join ELI and a panel of experts to explore these questions and opportunities for deeper and better engagement in light of the renewed national focus on racial injustice.

Panelists:

- Emily A. Collins, Executive Director & Managing Attorney, Fair Shake Environmental Legal Services, Moderator
- Nakhia Crossley, Central Region Director and Counsel, Solar Energy Industries Association (SEIA)
- Marianne Engelman Lado, Visiting Professor, Douglas Costle Chair in Environmental Law, and Director, Environmental Justice Clinic, Vermont Law School; Lecturer, Yale University School of Public Health; and Lecturer, Yale School of the Environment (invited)
- Philip McAdoo, Vice President, Diversity, Equity, and Inclusion, Earthjustice
- John Minode'e Petoskey, Legal Fellow, Environmental Law and Policy Center (ELPC)

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Suite 700
Washington, DC 20036
United States
202.939.3800 | www.eli.org

Clarke, Victoria

From: Engelman-Lado, Marianne
Sent: Wednesday, February 17, 2021 1:34 PM
To: Dorka, Lilian; Clarke, Victoria
Cc: Hoffer, Melissa; Packard, Elise; Fugh, Justina
Subject: RE: Meeting at 4:30 today with ECRCO

Thanks for the explanation. I look forward to the meeting.

Best,

Marianne

From: Dorka, Lilian <Dorka.Lilian@epa.gov>
Sent: Wednesday, February 17, 2021 12:57 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Meeting at 4:30 today with ECRCO

Thanks Marianne! I requested the meeting today just to (b) (5)

[REDACTED] I will be the only one from ECRCO attending the call today and do not anticipate discussing any of the substantive issues (e.g., policy issues) raised in the letter and we will not be discussing how to respond to the advocates/writers.

As such, based on my understanding of Victoria's note below, (which is very helpful) I don't see any conflicts with your participation in the meeting? But great to confirm this through Victoria.

Hope this is helpful. Please let me know if you have any other questions. And thanks for accepting the meeting -- I know you guys are swamped! Lilian

Lilian Sotolongo Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-9649 - Office
202-695-9888 - Cell
Pronouns: she/her/hers

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Sent: Wednesday, February 17, 2021 12:39 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>
Subject: RE: Meeting at 4:30 today with ECRCO

Thanks. This is helpful.

Lilian and Elise, do you have time to touch base beforehand to figure out an agenda consistent with Victoria's email? Or if either of you have a sense of the agenda, please feel free to let me know if you want me to participate in only a portion – or none – of the meeting. Otherwise, I'll plan to join at the beginning and we can figure out how to proceed.

Thanks to all.

Best,

Marianne

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Wednesday, February 17, 2021 12:33 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>
Subject: RE: Meeting at 4:30 today with ECRCO

Hi Marianne,

Thanks for sending this along! You of course may attend the meeting and you may even participate in internal Agency discussions about implementing the recommendations or the policy issues that the letter raises. However, because of the Biden Ethics Pledge's two-year cooling off period for former employers, as well as your own involvement in drafting the letter, you may not participate in discussions about how to respond to the authors of the letter, or become involved in drafting the response to the authors. Lilian (cc'd) and ECRCO will need to figure out a way to bifurcate the meeting to allow for this arrangement.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Sent: Wednesday, February 17, 2021 10:12 AM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Meeting at 4:30 today with ECRCO


Victoria,

Thanks again for the meeting yesterday.

As you'll recall, we discussed my previous role in an alliance of EJ activists, EJ groups, and environmental and civil rights groups. As we discussed, my role was frequently to work in partnership with a group of activists and organizations,

among other things to draft correspondence. One of the main common goals of this set of groups is to strengthen civil rights enforcement in the EJ space.

This afternoon Melissa, Elise, and I have a meeting scheduled with Lilian Dorka at ECRCO, which is apparently focused on the attached letter, which was shared by the alliance of groups with the transition team in December. I had a hand in drafting this letter and wanted to touch base with you to clear whether I am conflicted from participating in the meeting. As I understand it, and Elise can weigh in, (b) (5)



Please let me know if you need more information. If there is no conflict under rules of ethics and the Biden pledge, I would plan to offer at the beginning of the meeting that I can participate or leave others in the group to have the conversation.

Many thanks,

Marianne

From: [Razor, Lila](#)
To: [Keith, Jennie](#); [Engelman-Lado, Marianne](#); [Clarke, Victoria](#)
Subject: RE: Remote Speaking Invitation: Accountability to Racial Justice in the Environmental Sector (March 2)
Date: Monday, February 22, 2021 3:25:09 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)

Thanks!

From: Keith, Jennie <Keith.Jennie@epa.gov>
Sent: Monday, February 22, 2021 11:04 AM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Cc: Razor, Lila <Razor.Lila@epa.gov>
Subject: RE: Remote Speaking Invitation: Accountability to Racial Justice in the Environmental Sector (March 2)

Hi Lila, I am sending this to confirm that there will no need to set up a meeting to touch base. We're all good. Thanks! Jennie for OGC/Ethics

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Sent: Monday, February 22, 2021 10:31 AM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Cc: Keith, Jennie <Keith.Jennie@epa.gov>; Razor, Lila <Razor.Lila@epa.gov>
Subject: RE: Remote Speaking Invitation: Accountability to Racial Justice in the Environmental Sector (March 2)

Victoria,

Thanks for the email. Jim Payne brought up the March 2 ELI event when we touched base this morning and Dan Conrad offered to help figure out what forms are needed. Perhaps the easiest thing is to set up a few minutes to touch base so I can complete whatever forms are needed.

I want to make sure I've got the forms in for the events I had previously brought to your attention, as well as the ELI event if I'm going to accept it. If I attend, it'd be in my personal capacity.

I'm cc'ing Lila with the hope that she can find a time for us to touch base.

Thanks again!

Marianne

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Monday, February 22, 2021 10:25 AM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Keith, Jennie <Keith.Jennie@epa.gov>

Subject: FW: Remote Speaking Invitation: Accountability to Racial Justice in the Environmental Sector (March 2)

Hi Mariannel!

A question about your attendance at this event has come up this morning – I figured it would be good to bring this back up for us to discuss. Did you want to attend this event in your official capacity or in your personal capacity?

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Clarke, Victoria

Sent: Monday, February 08, 2021 9:05 AM

To: Marianne Engelman-Lado (b) (6)

Cc: Keith, Jennie <Keith.Jennie@epa.gov>; Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Subject: RE: Remote Speaking Invitation: Accountability to Racial Justice in the Environmental Sector (March 2)

Hi Mariannel!

I'm cc'ing my dear friend and colleague Jennie Keith on this email, since she is our travel expert and is also coordinating the travel process with OGC's Front Office. If you haven't yet met Jennie or spoken with her, she's an absolute delight.

With respect to this speaking engagement, is this event with Environmental Law Institute something that you want to do in your official capacity as a part of EPA, or something that you wanted to in your personal capacity unaffiliated with EPA?

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Marianne Engelman-Lado (b) (6)

Sent: Thursday, February 04, 2021 5:52 PM

To: Clarke, Victoria <clarke.victoria@epa.gov>

Subject: FW: Remote Speaking Invitation: Accountability to Racial Justice in the Environmental Sector (March 2)

Victoria,

I'm wondering how to handle speaking invitations. I received an invite to participate in an Environmental Law Institute program on March 2, which I thought might be a vehicle for outreach.

Many thanks,

Marianne

From: Caitlin McCarthy

Sent: Monday, February 1, 2021 10:12 AM

To: Marianne Engelman-Lado (b) (6)

Subject: RE: Remote Speaking Invitation: Accountability to Racial Justice in the Environmental Sector (March 2)

Good morning,

Thanks for your email, and congratulations on this exciting and well deserved news! I will of course keep it absolutely confidential. We would be delighted to have you, and I appreciate you running it by the ethics team.

Thank you,
Caitlin

Caitlin F. McCarthy
Director of Education, Associates and Corporate Partnerships
Environmental Law Institute
mccarthy@eli.org | www.eli.org | *Contact for remote phone number*

[***LATEST POST: Clear Corona Skies: Air Quality in the United States During a Global Pandemic***](#)

If you're not an ELI member, you should be!

Go [HERE](#) to learn more and/or sign up!



From: Marianne Engelman-Lado (b) (6)
Sent: Sunday, January 31, 2021 6:00 PM
To: Caitlin McCarthy <mccarthy@eli.org>
Subject: Re: Remote Speaking Invitation: Accountability to Racial Justice in the Environmental Sector (March 2)

External Email - If suspicious, please contact blain@eli.org

Caitlin,

Thanks for the invite. I'd be delighted to join the March 2 event but it looks like I'm (confidentially) joining the Biden Administration this week and would need to get approval from the ethics office before confirming. My apologize for the delay but this has been in the works and I was trying to figure out how to handle it.

Please keep this info confidential. It may be announced as early as tomorrow. If it's acceptable to you, I can then run it by ethics. Please let me know.

Best,

Marianne

From: Caitlin McCarthy <mccarthy@eli.org>
Date: Friday, January 29, 2021 at 10:59 AM
To: Marianne Engelman-Lado (b) (6)
Subject: RE: Remote Speaking Invitation: Accountability to Racial Justice in the Environmental Sector (March 2)

Good morning,

I hope this finds you well. I wanted to follow up on our invitation below. We would be thrilled to have you, and I'm happy to answer any questions you may have as you decide.

Thanks for your consideration,
Caitlin

Caitlin F. McCarthy
Director of Education, Associates and Corporate Partnerships
Environmental Law Institute
mccarthy@eli.org | www.eli.org | *Contact for remote phone number*

[LATEST POST: Clear Corona Skies: Air Quality in the United States During a Global Pandemic](#)

If you're not an ELI member, you should be!

Go [HERE](#) to learn more and/or sign up!



From: Caitlin McCarthy

Sent: Monday, January 25, 2021 1:27 PM

To: (b) (6)

Subject: Remote Speaking Invitation: Accountability to Racial Justice in the Environmental Sector (March 2)

Dear Professor Engelman Lado,

I hope this finds you well. My name is Caitlin McCarthy and I am the Director of Education, Associates, and Corporate Partnerships here at the [Environmental Law Institute](#). On behalf of ELI, I would like to extend an invitation to you to join us as an expert panelist for an upcoming webinar.

We would be thrilled to have you lend your expertise to **“Keeping To Our Word: Accountability to Racial Justice in the Environmental Sector”** on **March 2**. This program will focus on actions taken, or that could be taken, by organizations in the environmental sector following the multitude of public statements promoting racial justice issued by environmental organizations (companies, NGOs, and others) last summer. More information can be found in the attached document.

We would be honored if you would lend your expertise to this webinar:

Title: *Keeping To Our Word: Accountability to Racial Justice in the Environmental Sector*

Time: 12:00 PM – 1:30 PM ET

Date: *March 2, 2021*

I would like to note that video from this event will be recorded and uploaded to ELI’s website. There is also a possibility that we will transcribe portions of the event for publication in one of our journals. I would be seeking your permission for both of these uses.

Please let me know if you will be able to join us for this program and if you have any questions as you decide, please do not hesitate to contact me. Thank you for your consideration and I look forward to hearing from you!

Thank you,
Caitlin

Caitlin F. McCarthy
Director of Education, Associates and Corporate Partnerships

Environmental Law Institute

mccarthy@eli.org | www.eli.org | *Contact for remote phone number*

LATEST POST: Clear Corona Skies: Air Quality in the United States During a Global Pandemic

If you're not an ELI member, you should be!

Go [HERE](#) to learn more and/or sign up!



Clarke, Victoria

From: Engelman-Lado, Marianne
Sent: Wednesday, April 14, 2021 3:45 PM
To: Fugh, Justina
Cc: Kaczmarek, Chris; Rhines, Dale; Goerke, Ariadne; OGC Ethics; Cole, Joseph E.; Dorka, Lilian; Talbert-Duarte, Angelia
Subject: RE: signed pledge waiver

Many thanks!

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Wednesday, April 14, 2021 3:01 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Kaczmarek, Chris <Kaczmarek.Chris@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; OGC Ethics <OGC_Ethics@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>
Subject: signed pledge waiver

Hi there,

Attached please find your signed limited waiver from the Biden ethics pledge. Under this waiver, you are now permitted to work on specific party matters in which one of your former clients, NRDC, is a party or represents a party so long as you did not previously work on that same matter. As we've discussed, your prior work with NRDC focused only on a handful of FOIA cases in the Title VI context. (b) (5)

Effective immediately, you may interact as part of your official duty in specific party matters in which NRDC is a party.

So, I'm afraid you have even more work coming your way!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Engelman-Lado, Marianne](#)
To: [Clarke, Victoria](#)
Cc: [Razor, Lila](#); [Fugh, Justina](#)
Subject: Re: Your New Entrant Report in INTEGRITY
Date: Monday, February 15, 2021 8:05:23 PM

Wonderful. Thanks for analyzing the issue in such a timely way.

Best,

Marianne

Sent from my iPhone

On Feb 15, 2021, at 5:06 PM, Clarke, Victoria <clarke.victoria@epa.gov> wrote:

Hi Marianne,

Rosemary and I spoke earlier this afternoon – thank you very, very much for helping to elevate it to her attention! Attached is the most current list of individuals that were invited to the meeting. I understand the highlighted names to be those who have RSVP'd.

In order for you to attend a meeting where a former employer is present, the Biden Pledge and OGE's Guidance at DO-09-11 set out that the meeting must be 1) about a matter of general applicability (or broader) and 2) open to all interested parties.

From my discussions with Rosemary, this is going to be a meeting that focuses broadly on environmental justice, giving attendees not just an introduction to EPA's new leadership, but also to provide them with an open forum to address their thoughts and perceptions on environmental justice and what changes or improvements can be done. This satisfies the first prong.

When OGC/Ethics is determining whether a meeting or communication is "open to all interested parties" for purposes of the Ethics Pledge, we have to ensure that there is a multiplicity of parties present. Based on guidance from the Office of Government Ethics, this means that at least four other parties are present (in addition to your former employer) and a diversity of viewpoints is represented. For both the overall invite list and the RSVP list, there are many more than 5 stakeholders (including WE ACT). Furthermore, even though these organizations may be interested in discussing the same topic of environmental justice, each organization has a distinct mission, perspective, and stakeholder interest. This satisfies the second prong.

As such, you may accept Rosemary's invitation and attend the meeting with the environmental justice advocates tomorrow.

Have a lovely Monday evening!

Victoria

Victoria Clarke

Attorney-Advisor

U.S. Environmental Protection Agency

Office of General Counsel

Washington, D.C. | 7348 WJCN

EPA Office: 202-564-1149

EPA Cell: 202-336-9101

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Sent: Monday, February 15, 2021 1:12 PM

To: Clarke, Victoria <clarke.victoria@epa.gov>

Cc: Razor, Lila <Razor.Lila@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>

Subject: Re: Your New Entrant Report in INTEGRITY

Thanks. I think it's a meet and greet but intended as an introduction focused on policy matters of importance to EJ groups. It'd be great to reach out to Rosemary. I don't know much more than the list of attendees and what was in the invite.

Thanks!

Marianne

Sent from my iPhone

On Feb 12, 2021, at 2:57 PM, Clarke, Victoria <clarke.victoria@epa.gov> wrote:

Hi again, Marianne! I wanted to let you know that I've reached out Rosemary to get more information. I will let you know if you may attend this meeting once I know more.

Happy Friday,

Victoria

Victoria Clarke

Attorney-Advisor

U.S. Environmental Protection Agency

Office of General Counsel

Washington, D.C. | 7348 WJCN

EPA Office: 202-564-1149

EPA Cell: 202-336-9101

From: Clarke, Victoria

Sent: Friday, February 12, 2021 9:22 AM

To: Razor, Lila <Razor.Lila@epa.gov>; Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Cc: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: RE: Your New Entrant Report in INTEGRITY

Hi Marianne,

Thanks for raising this. Attending a meeting where WE ACT is present could be problematic, but I need more information to make that call.

You already know that under the Pledge, you're prohibited from specific party matters, including meetings, where former employers and clients are present *unless* the meeting is about a particular matter of matter general applicability and open to all interested parties. You were on the Board of WE ACT, so my assumption is you had fiduciary responsibilities to WE ACT, which means for the Pledge they're

considered a former employer.

In order to determine if it is permissible for you to attend this meeting, I'll need to know more about the meeting itself as well as the identities of the other parties. Is it truly a meet and greet? Are there plans to discuss policy issues? Do you know who is invited and the organizations they're representing?

Any information that you have would be very helpful – and I can reach out to Rosemary, too.

Victoria

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Attorney-Advisor

U.S. Environmental Protection Agency

Office of General Counsel

Washington, D.C. | 7348 WJCN

EPA Office: 202-564-1149

EPA Cell: 202-336-9101

From: Razor, Lila <Razor.Lila@epa.gov>

Sent: Friday, February 12, 2021 8:58 AM

To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>;
Clarke, Victoria <clarke.victoria@epa.gov>

Subject: RE: Your New Entrant Report in INTEGRITY

Hi,

Reaching out to Victoria now.

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Sent: Friday, February 12, 2021 8:07 AM

To: Clarke, Victoria <clarke.victoria@epa.gov>

Cc: Razor, Lila <Razor.Lila@epa.gov>

Subject: RE: Your New Entrant Report in INTEGRITY

Thanks. I'm cc'ing Lila with the hope that we can get something on our calendars early next week.

Victoria,

Rosemary Enobakhare has organized an introductory meeting with EJ leaders for many of us – including Avi, Melissa, Dimple, and me – for Tuesday at 4. Peggy Shepard, the ED of WE ACT, is among the attendees, and you may remember that I've served on the board of WE ACT for a number of years, resigning as part of the transition to EPA. I wanted to check with you as to whether this precludes me from participating.

Many thanks,

Marianne

From: Clarke, Victoria <clarke.victoria@epa.gov>

Sent: Thursday, February 11, 2021 8:56 AM

To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Subject: RE: Your New Entrant Report in INTEGRITY

Sure! Do you want me to schedule a time for with you directly, or work through someone to get something on your calendar?

Separate from the financial disclosure questions, would it also be helpful

for you and I to have a meeting to generate your list of clients in the past two years, or is this something that you've already started and have in hand?

Victoria

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U.S. Environmental Protection Agency

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Washington, D.C. | 7348 WJCN

EPA Office: 202-564-1149

EPA Cell: 202-336-9101

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Sent: Thursday, February 11, 2021 8:26 AM

To: Clarke, Victoria <clarke.victoria@epa.gov>

Subject: RE: Your New Entrant Report in INTEGRITY

Victoria,

Thanks!

Can we schedule a few minutes early next week? It'd be helpful to touch base about these forms and any other questions.

Best,

Marianne

From: Clarke, Victoria <clarke.victoria@epa.gov>

Sent: Wednesday, February 10, 2021 4:11 PM

To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Subject: Your New Entrant Report in INTEGRITY

Hi Mariannel!

This is Victoria from OGC Ethics. I wanted to quickly remind you that the due date for your New Entrant report is March 2. I will periodically be nagging you about the report (as I have about your client list!) – and I want to also apologize in advance for that! We need a completed New Entrant Report prior to issuing you a recusal statement, so having it done is a big priority for our office.

If you need any help with the New Entrant Report, please let me know – I'm your point of contact in OGC Ethics for any questions that you might have with respect to it.

Victoria

Victoria Clarke

Attorney-Advisor

U.S. Environmental Protection Agency

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Washington, D.C. | 7348 WJCN

EPA Office: 202-564-1149

EPA Cell: 202-336-9101

<EJ Meeting List.docx>

Clarke, Victoria

From: Engelman-Lado, Marianne
Sent: Tuesday, February 23, 2021 12:56 PM
To: Clarke, Victoria
Subject: RE: Your New Entrant Report in INTEGRITY
Attachments: MEL Employers Clients and Matters.docx

Victoria,

Thanks so much.

I annotated the list a bit, fyi. Please let me know if my annotations raise any question.

There was one other FOIA that I thought might be relevant but I'm having trouble getting FOIA numbers or pinning down more exact information. When I first got to Earthjustice – way back before the 2 year period, (b) (6), (b) (5)

Please let me know.

Thanks again,

Marianne

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Tuesday, February 23, 2021 12:22 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Your New Entrant Report in INTEGRITY

Hi Mariannel! Wanted to make sure that I hadn't missed anything with respect to your clients or former employers. Whenever you've got some time, give the attached document a once over and let me know if we're in the clear.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Clarke, Victoria
Sent: Tuesday, February 16, 2021 3:23 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Cc: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: RE: Your New Entrant Report in INTEGRITY

Hi Mariannel

It was lovely to speak with you this afternoon. I'm attaching the list of employers, clients, and matters that we generated, as well as my notes. Please take a look over it and let me know if I've missed anything or misspelled anyone's name!

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
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From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Sent: Monday, February 15, 2021 8:05 PM

To: Clarke, Victoria <clarke.victoria@epa.gov>

Cc: Razor, Lila <Razor.Lila@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>

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Cc: Fugh, Justina <Fugh.Justina@epa.gov>

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Best,

Marianne

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Sent: Wednesday, February 10, 2021 4:11 PM

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Subject: Your New Entrant Report in INTEGRITY

Hi Marianne!

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If you need any help with the New Entrant Report, please let me know – I'm your point of contact in OGC Ethics for any questions that you might have with respect to it.

Victoria

Victoria Clarke

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Office of General Counsel

Washington, D.C. | 7348 WJCN

EPA Office: 202-564-1149

EPA Cell: 202-336-9101

<EJ Meeting List.docx>

Clarke, Victoria

From: Keith, Jennie
Sent: Monday, February 22, 2021 8:14 PM
To: Engelman-Lado, Marianne
Cc: Clarke, Victoria
Subject: Re: (ETHICS) Advice about your ELI panel on March 2 (Marianne Engelman-Lado)

Evening Marianne,

For the ELI event, you have no ethics forms to complete.

Victoria is working in the mornings only for the next two weeks. But I'm sure we'll be able to advise on the Duke event shortly. I'll help coordinate advice if need be and check in with you again later tomorrow morning.

Thanks and good night!
Jennie for OGC/Ethics
202-564-3412

Sent from my iPhone

On Feb 22, 2021, at 5:09 PM, Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov> wrote:

This is all helpful. Many thanks.

I am still filling out forms and figuring out (b) (6)

This hasn't been finalized yet and I need to understand more about how it works.

Is there any additional form I need to fill out or step I need to take in the approval process from OGC/Ethics? Once I accept the invitation, do I need to notify your office?

Victoria, there were a handful of other events on the list I sent to you in January and I want to make sure that I conform to EPA protocols on these as well. I'm scheduled to moderate a panel for the Duke conference in my personal capacity this Saturday and wasn't sure whether I need to seek another level of approval.

Again, many thanks to everyone.

Best,

Marianne

From: Keith, Jennie <Keith.Jennie@epa.gov>
Sent: Monday, February 22, 2021 5:03 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Subject: (ETHICS) Advice about your ELI panel on March 2 (Marianne Engelman-Lado)

Hi Marianne,

This email provides ethics advice about how to participate as a speaker on the panel (listed at bottom of email) hosted by the Environmental Law Institute on March 2, 2021. If you decide to accept this request, **you may do so and participate in your personal capacity as a private citizen only by adhering to the following ethics parameters.**

Reference to your EPA Position – Avoid Confusion, Avoid Misuse of Position

- 1) In any of its communications, ELI may not reference your EPA title and authority as the byline for identifying you as a panel speaker

EXAMPLE – In the communication at the bottom of this email thread, you may not be:

- Marianne Engelman-Lado, ~~EPA Deputy General Counsel for Environmental Initiatives~~

Because you're not speaking in your official EPA capacity, you cannot be listed with your EPA credentials. Furthermore, ELI needs to correct its panel information materials to reflect current facts. As I understand from Victoria, you are no longer employed at Vermont Law School or Yale University. So, in these instances, we have seen employees referenced as:

- Marianne Engelman-Lado, *former Visiting Professor and Director of the Environmental Justice Clinic, Vermont Law School; former Lecturer at Yale University*
- Marianne Engelman-Lado, listing of education credentials (e.g., L.L.M. in Environmental Law, Ph D. in Philosophy, etc. I don't know your credentials, this is just an example)

These examples do not raise ethics concerns. If you have any questions about how to reference your byline, let us know.

- 2) You may reference your EPA employment in your biography, but following certain parameters.

When you provide an updated biography, you may include your new EPA position if you'd like. However, the detail about your EPA job may not be any more prominent than other biographical details. Generally, we advise that your biography include at least three sections (e.g., work history, education, personal details, etc.). If your EPA employment were the most prominent detail, then it may confuse the attendees at the session to think you're really there in your EPA capacity. And we want to avoid that.

- 3) Use your personal contact information.

For the purposes of avoiding confusion, we recommend that you continue to use your personal contact information (phone number, email address, mailing address) all the way through your panel presentation. If people would like to follow up with you afterwards, again we recommend you provide your personal contact information. This reinforces to the attendee and/or organizer that you're there in your personal capacity and not in any way a representative of the government.

- 4) Use a disclaimer throughout your presentation / do not discuss EPA business.

It's likely that your new EPA position may be referenced. For example, the person introducing you may include it as a detail (again, can't be more prominent than any other biographical detail), or attendees may ask you questions about EPA's positions or priorities. When given the opportunity, make sure to use a disclaimer, such as: You're here in your personal capacity representing an academic perspective. You're not here representing the EPA or the U.S. Government and the views you're discussing are your own and do not necessarily represent the government. As to how to handle inevitable questions about EPA: You can't discuss non-public information, only information that's been made public (e.g., through press reporting). But again, to avoid confusion, it's best not to entertain questions about EPA because you're not there in your EPA capacity.

Use of Government Time and Resources – Avoid Misuse of Position

5) **Do not use official time to prepare for or participate in the panel.**

Because this is not official duty, you cannot use government time to prepare your remarks or to speak on the panel. Since the panel occurs during a "lunch" hour, you may use non-duty time (30 minutes for lunch if you work an 8-hour day), leave (e.g., submit a request for leave to your supervisor) or some combination thereof. If you're on flexible schedules (like MaxiFlex), you may have other options, too (like this is your compressed day-off, etc.).

6) **Do not use government equipment.**

OGC/Ethics recommends not using your government laptop to remote into this event since your government equipment can be used only for government purposes. Please use your own personal equipment to attend the panel and prepare your remarks.

7) **Do not use the Agency seal or logo in your presentation.**

While I imagine highly unlikely, if you have slides and/or other EPA insignia about (e.g. using the Agency seal in your panel picture), you cannot use those in your presentation.

Okay, I think I covered all the bases here. Let me know if you have any questions, or you want to discuss anything specific.

Thanks!

Jennie for OGC/Ethics
202-564-3412

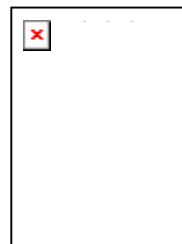
From: Environmental Law Institute <law@eli.org>

Sent: Wednesday, February 17, 2021 3:43 PM

Subject: Keeping To Our Word: Accountability to Racial Justice in the Environmental Sector

Keeping To Our Word: Accountability to Racial Justice in the Environmental Sector

March 2, 2021, 12:00 pm - 1:30 pm ET

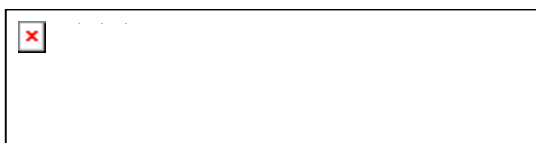


JOIN US

Webinar only

REGISTRATION

This event is free and open to the public but you must register by [February 26th](#).



An ELI Public Webinar

In the wake of last summer's racial reckoning, a multitude of companies, non-profit organizations, and others have released statements promoting racial justice. Organizations that had been previously silent on issues stemming from and connected to racial injustice began speaking out about the importance of anti-racism and structural change.

These statements of solidarity became nearly ubiquitous in the environmental sector. Traditionally white-led environmental organizations advocated for justice and equity by explicitly condemning white supremacy, police brutality, and environmental racism.

Although this shift is commendable and necessary, demonstrated and quantifiable actions are required to underpin such statements.

What actions can organizations in the environmental sector take in order to actualize the principles they have vocally supported? How can organizations take accountability for and begin rectifying historic complicity in the exclusion of black, indigenous, and other people of color from their staff and leadership? How do we evaluate the success of Diversity, Equity, and Inclusion efforts? How can organizations collaborate with grassroots and community leaders to strengthen this shared work towards a more equitable, just, and environmentally sound future? Join ELI and a panel of experts to explore these questions and opportunities for deeper and better engagement in light of the renewed national focus on racial injustice.

Panelists:

- Emily A. Collins, Executive Director & Managing Attorney, Fair Shake Environmental Legal Services, Moderator
- Nakhia Crossley, Central Region Director and Counsel, Solar Energy Industries Association (SEIA)
- Marianne Engelman Lado, Visiting Professor, Douglas Costle Chair in Environmental Law, and Director, Environmental Justice Clinic, Vermont Law School; Lecturer, Yale University School of Public Health; and Lecturer, Yale School of the Environment (invited)
- Philip McAdoo, Vice President, Diversity, Equity, and Inclusion, Earthjustice
- John Minode'e Petoskey, Legal Fellow, Environmental Law and Policy Center (ELPC)

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Washington, DC 20036
United States
202.939.3800 | www.eli.org

From: [Engelman-Lado, Marianne](#)
To: [Keith, Jennie](#)
Cc: [Clarke, Victoria](#)
Subject: RE: (ETHICS) Your upcoming speaking engagements
Date: Wednesday, February 24, 2021 11:52:37 AM

Thanks.

From: Keith, Jennie <Keith.Jennie@epa.gov>
Sent: Wednesday, February 24, 2021 11:27 AM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: (ETHICS) Your upcoming speaking engagements

Hi Marianne,

I wanted to give you a quick update that you may participate in this Saturday's event in your personal capacity, and the advice will be similar to the ELI event. I will write back more comprehensively soon.

Thanks!
Jennie for OGC/Ethics

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Sent: Tuesday, February 23, 2021 2:28 PM
To: Keith, Jennie <Keith.Jennie@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: (ETHICS) Your upcoming speaking engagements

Thanks so much!

Please let me know if the responses below raise any question.

Many thanks,

Marianne

From: Keith, Jennie <Keith.Jennie@epa.gov>
Sent: Tuesday, February 23, 2021 12:39 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: (ETHICS) Your upcoming speaking engagements

Hi Marianne,

After coordinating with Victoria, please review this table and answer the following:

1. Would you still like to do the event?
2. Would you do it in your personal capacity?
3. Would you provide more information about the sessions on which you're speaking? For example, I looked for a website for the conference at Duke this weekend, but found only a brief [explanation](#). For each event, would you provide something akin to the information we had about the ELI event that I gave advice on yesterday? Are there any communications about these events that discuss your sessions? If no public-facing website, did you receive invitations to you that go into more detail about what the panel is and what your expected contributions are?
4. Would you confirm no compensation for each activity?

UPCOMING EVENT OR ACTIVITY	EPA ETHICS ANSWER AND EXPLANATION	MARIANNE'S RESPONSES
Saturday, Feb. 27: Community Visions for Environmental Justice Organizing conference, a joint effort between Duke's Environmental Law & Policy Clinic, Howard Law School's Environmental Justice Center, Vermont Law School's Environmental Justice Clinic and Environmental Justice Law Society, and the Yale School of the Environment. I'm scheduled to moderate a panel discussed on "Seeking Justice Through Policy: Environmental Justice Legislation and Executive Action."	Because you will have a covered relationship with Vermont Law School and Yale University, you can do this lecture only on your own time in your personal capacity. You will need to seek prior approval from EPA Ethics and will not be able to accept compensation.	<ul style="list-style-type: none">• Yes, it was a commitment I had made and I'd still like to go forward in my personal capacity.• I'm moderating a session on Saturday that, as I understand it, will be focused on how policies and executive orders at the federal, state and local levels can serve communities facing environmental justice. I will provide the disclaimer, introduce speakers, and moderate the Q & A.• I will receive no compensation.
Wednesday, March 10, Texas Environmental Law Journal Symposium, Proving Discrimination in Title VI Challenges to Environmental Programs, at UT Austin.	You may present in your personal capacity but must seek prior approval of this uncompensated outside activity from EPA Ethics. If you wish to present in your official capacity, then the invitation will have to be reissued by UT Austin.	<ul style="list-style-type: none">• Yes, it was a commitment I had made and I'd still like to go forward in my personal capacity.• I'm on the panel, which is focused on providing discrimination and I will base my remarks on experience before coming to EPA.• I will receive no compensation.

Thursday, March 25 th , Northeast Summit for a Sustainable Built Environment (NESSBE), talk focused on equity work with the GC3 in Connecticut.	You may present in your personal capacity but must seek prior approval of this uncompensated outside activity from EPA Ethics. If you wish to present in your official capacity, then the invitation will have to be reissued to you.	<ul style="list-style-type: none"> • At this point I am planning on attending. It was another commitment I had made before agreeing to move to EPA. • I'm on a panel and will base my remarks on my experience working on a working group with the GC3 before coming to EPA. • I will receive no compensation.
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Thanks!

Jennie for OGC/Ethics
202-564-3412

Jennie Keith | Ethics Officer | Office of General Counsel | US EPA | Mail Code 2311A | Room 4312 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-3412 | fax 202-564-1772

From: [Engelman-Lado, Marianne](#)
To: [Clarke, Victoria](#)
Cc: [Fugh, Justina](#)
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary
Date: Friday, February 05, 2021 6:33:06 PM

This is extremely helpful and I want to take a closer look. Sorry I wasn't able to call you back: one thing led to another this afternoon, but I'd like to reconnect next week.

Thanks again,
Marianne

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Friday, February 5, 2021 5:37 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary
Hi Marianne!

It was great to speak with you this afternoon – even though our conversation got cut short! Before it leaves my mind, I want to think through the example of the NRDC FOIA Request, so that we can see the flow of the restrictions and hopefully make some logical sense of them by seeing them in action.

The basis: NRDC hired you as their attorney to work on a FOIA Request. I believe it was EPA-2021-000375?

- Under your bar rules:
 - As an attorney, you have bar rules, and those bar rules say you have to protect client confidences. Absent the ability to ask for and receive informed consent from a former client, you are not allowed to work on the same or a substantially related matter at EPA that you worked for on behalf of someone else. From what I understand, there was an understood and contractual attorney-client relationship between you and NRDC for the purposes of filing EPA-2021-000375 (and similar ones on a quarterly basis) and litigating it, if necessary. As such, you are barred from working on EPA-2021-000375 at EPA, unless you could ask for and obtain informed consent from NRDC as your former client. I imagine that this bar would include not just the FOIA itself, but also any appeal regarding that FOIA, as the appeal is substantially related to the actual FOIA request, but for that analysis, I'd have to refer you to your bar counsel.
- Under the Biden Pledge:
 - During the time period of January 31, 2021 (your appointment date) to January 31, 2023 (your appointment date + 2 years under the Pledge):
 - You may not engage in any specific party matter (litigation, contract, FOIA, FOIA appeal, etc.) where NRDC is a party or represents a party. This is because NRDC was your client within the previous two years, as they hired you as their attorney.
 - NOTE 1: This doesn't apply to matters of general applicability, such as rulemakings. Let's say, for example, that NRDC files a lawsuit successfully challenging a rule. You are *still* allowed to work on the rule, even if it was the subject of NRDC's lawsuit. You are just not allowed to work on the litigation about the rule with NRDC or have case strategy discussions about the NRDC litigation.
 - NOTE 2: This also doesn't apply to meetings with your former clients that are 1) about matters of general applicability and 2) open to all interested parties. You'll want to work with OGC Ethics closely about if a meeting fits these criteria.
 - You may not work on EPA-2021-000375 or substantially related matters to EPA-2021-000375.
 - First, your bar rules would prohibit it unless you were allowed to obtain informed consent from NRDC.
 - Second, even if you could and did obtain informed consent from NRDC, a FOIA request is still a specific party matter. NRDC is a former client and the two-year cooling off period for specific party matters with former clients under the Pledge still hasn't expired.
 - After January 31, 2023 (past the 2-year cooling off period under the Pledge):
 - You may engage in a specific party matter where NRDC is a party or represents a party.

- You may not work on EPA-2021-000375 or substantially related matters to EPA-2021-000375 if you could not/did not obtain informed consent from NRDC.
- You may work on EPA-2021-000375 or substantially related matters to EPA-2021-000375 if you could and did obtain informed consent from NRDC. You can work on it after January 31, 2023 because the cooling off period for former clients on specific party matters under the Pledge has expired and the FOIA is considered a specific party matter.

Your bar rules aside, I know the Pledge restriction may seem broad – a two-year ban from anything involving NRDC *just* because of a FOIA request? But the Pledge is the Pledge, and the restriction is intended to show the public that you’re only working in their interests and not the interests of a former employer or client. For reference, here’s the full definition of ‘former client’ at Section 2(l) (emphasis mine):

(l) “Former client” is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, **but excluding instances where the service provided was limited to speeches or similar appearances. It does not include clients of the appointee’s former employer to whom the appointee did not personally provide services.**

There are only two exceptions – speeches or similar appearances, or clients of your former employer that you did not personally provide services to. The Office of Government Ethics in a previous advisory opinion did discuss what a “similar appearance” might be. Office of Government Ethics Advisory [DO-09-011](#) (3/26/09) page 5, which applies to Executive Order 13989 pursuant to OGE Legal Advisory [LA-21-03](#) (1/22/21) says:

“In addition to excluding all activities that consist merely of speaking engagements, this provision is intended to exclude other kinds of discrete, short-term engagements, including certain de minimis consulting activities.

Essentially, the Pledge is not intended to require a two-year recusal based on activities so insubstantial that they are not likely to engender the kind of lingering affinity and mixed loyalties at which the Executive Order is directed. The exclusion for speaking and similar engagements was added to emphasize that the provision focuses on services that involved a significant working relationship with a former client. Therefore, the exclusion is not limited to speeches and speech-like activities (such as serving on a seminar panel or discussion forum), but includes other activities that similarly involve a brief, one-time service with little or no ongoing attachment or obligation.

In order to determine whether any services were de minimis, ethics officials will need to consider the totality of the circumstances, including the following factors:

- the amount of time devoted;
- the presence or absence of an ongoing contractual relationship or agreement;
- the nature of the services (e.g., whether they involved any representational services or other fiduciary duties); and
- the nature of compensation (e.g., one-time fee versus a retainer fee).

For example, the recusal obligation of Pledge paragraph 2 would not apply to an appointee who had provided consulting services on a technical or scientific issue, for three hours on a single day, pursuant to an informal oral agreement, with no representational or fiduciary relationship. [FN7] On the other hand, an appointee who had an ongoing contractual relationship to provide similar services as needed over the course of several months would be covered. In closer cases, OGE believes ethics officials should err on the side of coverage, with the understanding that waivers, under section 3 of the Order, remain an option in appropriate cases.

Speaking candidly, I would be hard pressed to say that providing attorney services would fall into the category of a de minimis activity. But I’m always happy to think through specific instances with you and Justina if you have them. I hope that helps explain what the restrictions mean in practice and why they’re in place. I’m about to sign off in the next fifteen minutes, but if you want to talk more on Monday or sometime next week about this, let me know!

Victoria

Victoria Clarke

Attorney-Advisor

U.S. Environmental Protection Agency

Office of General Counsel

Washington, D.C. | 7348 WJCN

EPA Office: 202-564-1149

EPA Cell: 202-336-9101

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Sent: Friday, February 05, 2021 3:45 PM

To: Clarke, Victoria <clarke.victoria@epa.gov>

Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary
Thanks. This is very helpful, and my plan is to pull all of the info together this weekend.
Best,
Marianne

From: Clarke, Victoria <clarke.victoria@epa.gov>

Sent: Friday, February 5, 2021 3:04 PM

To: Marianne Lado (b) (6) (b) (6)

Cc: Fugh, Justina <Fugh.Justina@epa.gov>; Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Subject: FW: an ethics welcome to Melissa Hoffer and Dimple Chaudhary
Hi Marianne!

I am not sure if you have access to your EPA email address yet, so I want to make sure you receive the below message. I know you had some questions about former employers and clients and associated restrictions following the ethics briefing on Thursday, so hopefully I can help address those and also clarify what we need from you. This email is going to refer to specific party matters and matters of general applicability, both of which make up the term “particular matters.” These terms can be confusing and get twisted around, so here’s how we think of them in the Federal ethics context.

- Specific party matters are proceedings that affect the legal rights of parties, or are isolatable transactions (or related sets of transactions) between identified parties. Specific party matters are things like investigations, applications, contracts, claims, judicial proceedings, litigations, etc.
- Matters of general applicability are broader and instead focus on the interests of a discrete and identifiable class of persons, such as an industry or profession. Matters of general applicability are things like rulemaking, or policy making.

Restrictions based on your bar rules

- We need: Confirmation that OGC Ethics has a complete list of all your specific party matters pending with EPA.

Based on your bar rules, you must protect the confidences of your former clients. You are permanently restricted from working on specific party matters (litigations, contracts, enforcement actions, etc.) that are the same as or substantially related to specific party matters that you worked on personally and substantially while in private practice – unless your bar permits you to obtain informed consent and you notify us in OGC/Ethics. You are not allowed to switch sides and your recusal statement will list out all the cases that you are barred from working on while at EPA.

In terms of what makes up the universe of these specific party matters, they are typically lawsuits. However, if you represented someone as their attorney for another type of specific party matter, like maybe an administrative appeal or a formal investigation rather than a lawsuit, then we would want to know about that, too.

With respect to what are your specific party matters, this is easy for solo practitioners, because it is those specific party matters where you personally represented someone as counsel or co-counsel. However, like a supervisory attorney at a law firm or a nonprofit, you’re in the unique position as coming from a law school with an environmental law clinic that you had some role in overseeing. You’re not responsible for all of the lawsuits and all of the clients at all of the clinics at Vermont Law, just like someone from a law firm is not responsible for all of the lawsuits or all of the clients that their firm represents. However, if you worked personally and substantially on a case, or you supervised someone, we would want you to include that in your list of cases.

Currently, we have your CARE v. EPA case on this list. But based on the information above, is there any other case that we should be including? Anything from PRRAC?

Restrictions based on Section 1, Paragraph 2 of the Biden Pledge

- We need: An explanation about board duties with certain entities in the past 2 years.
- We need: A list of your former clients since January 31, 2019.

Since we first had our ethics discussion all those weeks ago, we now know that there is an Ethics Pledge. The Pledge dictates that for 2 years from the date of your appointment to EPA (after Jan. 31, 2023), you will not participate in any specific party matter that is directly and substantially related to a former employer or former client that you had in the 2 years preceding your appointment (Jan. 31, 2019).

Based on your resume, we know that your former employers since January 31, 2019 are Vermont Law School, Yale University, and Poverty & Race Research Action Council. So, until after January 31, 2023, we know that you can’t work on a case, or a litigation, or have a speaking engagement with these three entities. This also includes meetings with your former employers, too – unless the meeting is about a matter of general applicability and participation in the meeting is open to all interested parties.

However, for the purposes of the Ethics Pledge, a former employer is not just someone who pays you. A former

employer can also include an organization where you served in a fiduciary role (e.g., board of directors, trustee) and had fiduciary responsibilities, even if you did not receive compensation for that work. You have several organizations listed on your resume that are within the 2 year time frame, and I will need to know more about your duties with them in order to determine if they fall into the category of a former employer because of any fiduciary responsibilities:

- Co-Chair, Equity and Environmental Justice Working Group, Governor's Council on Climate Change (GC3), Connecticut (January 2020 – present)
- Board Member, WE ACT for Environmental Justice (2013 – present; Interim Chair 2020 – present; chair, Governance Committee and secretary, 2018 - 2020)
- Co-Lead, Policy & Legal Hub; Member, Network Council; Member, Executive Committee, Cancer Free Economy Network (various roles from founding in 2014 -present)
- Board Member, African American Policy Forum (2010 – 2019)
- Board Member, Center for Public Representation (2009 – present)

For the GC3 co-chairship, this looks to be a component of a state, so you may only be subject to the one-year cooling off period under the impartiality regulations, since state and local governments are excluded from the Pledge. I still want to get an understanding of what you did, however.

Additionally, we need to know who are all the clients that you had since January 31, 2019, because the same restrictions are going to apply to them as it does to your former employers. As I explained in the restrictions based on your bar obligations – we're only interested in the clients that you took on personally or had some level of supervision over. During the ethics briefing on Thursday, you had raised the example of Vermont Law's energy clinic and that you had nothing to do with the clinic – provided that you truly didn't have any involvement in the clinic and didn't supervise any students and their cases within it, then you would not include any of the energy clinic's clients in your list, just as you wouldn't include their lawsuits. For the purposes of the pledge, a client is someone that you served as an agent, attorney, or consultant for.

In putting together your list of clients, it would be helpful for me if you could note who is likely to have an issue that could arise before the Agency. Given your work in environmental justice, this might be everyone, in which case just let me know that. Also let me know if you have any clients with whom you have signed a confidentiality agreement. We do not need to list those confidential clients by name, but we do need to make a note on your recusal statement that you have confidential clients but are abiding by your Pledge restrictions.

I hope that this email is helpful in trying to sort your obligations under the Pledge. It can be terribly confusing, but you're certainly not in it alone and I'm happy to chat with you more as we think through this.

Victoria

Victoria Clarke

Attorney-Advisor

U.S. Environmental Protection Agency

Office of General Counsel

Washington, D.C. | 7348 WJCN

EPA Office: 202-564-1149

EPA Cell: 202-336-9101

From: Clarke, Victoria

Sent: Tuesday, February 02, 2021 11:43 AM

To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Cc: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: FW: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Marianne and Happy Tuesday!

OGC Ethics plans to send a message similar to the one below to our HQ and Regional Counsels. From our prior discussions, we already know of your involvement in CARE v. EPA, 4:15-cv-03292-SBA (NDCA), as well as your FOIA request, EPA-2021-000375. However, for the purposes of your obligations under the Biden Pledge, we need to know the names of clients that you acted as agent, attorney, or consultant for in the two years preceding your appointment – particularly those that have or may have environmental issues that could arise before EPA. Is this something that you can get to us?

Thank you!

Victoria

Victoria Clarke

Attorney-Advisor

U.S. Environmental Protection Agency

Office of General Counsel

Washington, D.C. | 7348 WJCN

EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Fugh, Justina <Fugh.Justina@epa.gov>

Sent: Thursday, January 21, 2021 9:12 PM

To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>

Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>

Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi there,

As you might expect, the OGC/Ethics Office is cheerfully up to our eyeballs in ethics issues for our incoming appointees. Not only are we thinking, as we always do, about financial conflicts of interest, but we are also weighing impartiality concerns with former employers and former clients, bar obligations and now an executive order on ethics commitments. We will be drafting recusal statements, but we typically wait until after we have a chance to review the financial disclosure reports. As many of you also file that wretched report, you know how much work that entails. So, before we can distribute signed recusal statements, here's how to navigate the likely recusal issues for Melissa Hoffer and Dimple Chaudhary.

MELISSA HOFFER

- Melissa is bound by her bar restrictions from sharing the confidences of her former client, the Commonwealth of Massachusetts, and from switching sides in litigation in which she previously participated or for which she provided supervision. With the attached impartiality determination, however, I authorized her to participate in making policy decisions about that litigation, such as whether or not to stay the proceedings. That impartiality determination included the list of cases from which she is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.
- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:
Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	<i>Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA</i> , Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	<i>Labor Council for Latin America, NRDC, et al. v. EPA</i> , Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	<i>NRDC v. Wheeler</i> , Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	<i>Walters v. Flint, EPA, et al.</i> , Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-

564-1786 | fax 202-564-1772

Clarke, Victoria

From: Clarke, Victoria
Sent: Monday, March 22, 2021 11:10 AM
To: Koch, Erin
Subject: RE: Another recusal question
Attachments: RE: (b) (5)

Thanks, Erin!

Justina recently analyzed a similar issue for PTSLO in conjunction with the TSCA risk evaluation litigation. In that instance, there were also cases that had been consolidated. You may want to take a look at Justina's advice for some additional guidance! 😊

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Koch, Erin <Koch.Erin@epa.gov>
Sent: Friday, March 19, 2021 3:57 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Cc: Cole, Joseph E. <cole.josephe@epa.gov>; Kaczmarek, Chris <Kaczmarek.Chris@epa.gov>
Subject: RE: Another recusal question
Thank you Victoria! This is very helpful. Have a great weekend.

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Friday, March 19, 2021 3:50 PM
To: Koch, Erin <Koch.Erin@epa.gov>
Cc: Cole, Joseph E. <cole.josephe@epa.gov>; Kaczmarek, Chris <Kaczmarek.Chris@epa.gov>
Subject: RE: Another recusal question

Hi Erin,

I think you're in luck. In Ethics, we don't think in such broad categories as the media law offices – like global strategies, or statutes, or subject matters. That's because the ethics obligations that prevent the political appointees from participating in certain things are focused on specific party matters – that is to say, individual litigations. So, here's the framework that we're working with:

You already know that Melissa, Dimple, and Marianne are recused from certain litigations because of their bar obligations (because they worked on the underlying litigation) or because of their Pledge/Impartiality obligations (a party to the litigation is their former employer or their former client). The bar restriction applies for the entire life of the attorney, but the Pledge restriction lasts two years and the Impartiality restriction lasts only one year.

The prohibition from participating only applies to the specific party matter (the litigation) that the political appointee is recused from. So, if there is another similar case with similar facts, the political appointee is allowed to work on that other similar case, provided that the appointee didn't work on that case herself (bar obligation) and her former client/employer is not a party to the case (Pledge/impartiality obligation). An example might help explain this point better:

You've got 3 cases in front of you- Cases A, B, and C. Each case has a different plaintiff and is in a different court, however, even though there may be a few differing facts the overall complaints are the same as they implicate the same federal law, and the Agency's proposed strategy for handling all three cases is likely to be the same.

- Melissa is recused from Case A, because it is brought by the state of Massachusetts and it is a case that she worked on personally and substantially while employed by the state of Massachusetts.

- Dimple is recused from Case B, because it is brought by NRDC, her former employer (and client).
- Marianne is also recused from Case B, because NRDC is a former client, but is also recused from Case C because she supervised the case while working at the Environmental Justice Clinic at Vermont Law.

You can't go to Melissa, Dimple, or Marianne and try to talk globally about the litigation strategies for all three cases, because you're going to include at least one case that the appointee is recused from. However, you can go to Melissa, Dimple, or Marianne to talk about the cases that they are *not* recused from, even if the statute, subject matter, and Agency posture between the cases is the same. That's because the appointee didn't work on it personally and substantially, and the former client/employer is not a party – and that's what we care about from an ethics standpoint.

- You know you can't talk to Melissa about Case A, but you can talk to her about Cases B and C, because she didn't work on the underlying litigations and her former employer/client is not a party to those litigations.
- You know you can't talk to Dimple about Case B, but you can talk to her about Cases A and C, because again, she didn't work on the underlying litigations and her former employer/client is not a party to those litigations.
- You know you can't talk to Marianne about Cases B and C, but you can talk to her about Case A, because again, she didn't work on the underlying litigation and her former employer/client is not a party to the litigation.

(b) (5)

Additionally, the recusal from the specific party matters arising out of bar obligations or Pledge/Impartiality restrictions does not apply to matters of general applicability, like rulemakings. So, let's say the Agency decides to redraft a rule or create a regulation to try and remediate whatever is creating all of these lawsuits. Provided that there isn't a financial conflict of interest that would preclude the appointee from participating in the rulemaking (like let's assume an appointee has a boatload of stock in a pesticide company, probably can't work on the rulemaking), they political appointee is allowed to work on that rulemaking, *even* if it was the subject of a litigation that they were recused from.

Victoria

Victoria Clarke

Attorney-Advisor

U.S. Environmental Protection Agency

Office of General Counsel

Washington, D.C. | 7348 WJCN

EPA Office: 202-564-1149

EPA Cell: 202-336-9101

From: Koch, Erin <Koch.Erin@epa.gov>

Sent: Friday, March 19, 2021 9:16 AM

To: Clarke, Victoria <clarke.victoria@epa.gov>

Cc: Cole, Joseph E. <cole.josephe@epa.gov>; Kaczmarek, Chris <Kaczmarek.Chris@epa.gov>

Subject: Another recusal question

Victoria,

A lot of our current FIFRA litigation involves (b) (5)

, but the issue is consistent. Melissa, Dingle, and Marianne are each recused from some of these cases due to the parties involved. We are confused as to whether the overlapping issue of (b) (5) expands the breadth of those recusals, such that none of them should be involved in discussions of the issue for any of the cases or even for counseling on actions outside of litigation.

Please provide us guidance on this. If you need additional, more specific information, let me know.

THanks,

Erin S. Koch

Pesticides and Toxic Substances Law Office

Office of General Counsel

US EPA
202-564-1718

Clarke, Victoria

From: Fugh, Justina
Sent: Friday, March 19, 2021 5:06 PM
To: Cole, Joseph E.; Payne, James (Jim)
Cc: Clarke, Victoria
Subject: RE: (b) (5)
Attachments: (b) (5)

Hi,
I apologize for my delay in responding, which is inversely proportional to the esteem in which I hold you, Joe! I really am sorry for being so tardy. You asked:

Previously, following Justina's advice, we discussed general legal issues likely present in the risk evaluation cases with Marianne by focusing the information we provided in the discussion in the following way:

Please note that we will not discuss with you any specific party matter from which you are recused under your bar or pledge restrictions. The only specific party matter that we will discuss with you in the context of the TSCA risk evaluations is the asbestos risk evaluation case - ADAO et al. v. EPA et al. (9th Cir. No. 21-70160) – from which you are not recused.

(b) (5)

My short answer to you is that you may proceed with Marianne on the asbestos and 1,4-dioxane risk evaluations but not discuss either the methylene chloride or HBCD risk evaluations. She is recused from those. And now the long answer ...

When we look at the recusal obligations of Melissa/Dimple/Marianne, we focus on the specific party matters in isolation. If one of them is conflicted from a case (for whatever reason), and that case is then consolidated with others, then the individual is now recused from all of the cases. Because the conflicting case is now inextricably linked with the others in one single specific party matter (i.e., the consolidated cases), the individual cannot work on any of them. We can't play "hide the ball" and talk to, say, Melissa about the consolidated cases but pretend that we are talking only about the ones from which she is not conflicted. Because the cases are now consolidated, she can't participate in any of them or in discussions about all of them.

By contrast, as you know, we permitted Melissa to decide the status all cases pending at DOJ at the beginning of the Administration, which was a policy decision that did not require her to either: (a) reveal her former client's secrets, or (b) delve into the merits of the cases themselves. Instead, she made a policy decision *without actually reviewing the cases*, and thus did not violate her bar obligations. So if cases are separate but related in concept only – same risk assessment, same statute, same litigation strategy, etc. – that may not necessarily trigger an ethics issue for us. To the federal ethics way of thinking, if the cases are in different districts, then they are separate specific party matters. An individual who is recused from Case A that deals with the HBCD risk evaluation but may nevertheless participate fully in Case B even though that case also deals

with HBCD risk evaluation. In other words, simply because the Agency's litigation strategy may be the same does not automatically mean that the individual is recused from both cases.

Now let's apply these principles to the three PTSLO examples that present recusal issues:

EXAMPLE	RECUSED?			COMMENT
	MH	DC	MEL	
<p>Methylene chloride risk evaluation</p> <ul style="list-style-type: none"> • <u>9th Cir. No. 20-72091</u>: <ul style="list-style-type: none"> ○ Petitioners: Neighbors for Environmental Justice; New Jersey Work Environment Council; Sierra Club; United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO; and NRDC <ul style="list-style-type: none"> ▪ Earthjustice represents Neighbors for Environmental Justice, New Jersey Work Environment Council, and Sierra Club ▪ NRDC represents Neighbors for Environmental Justice, NRDC ▪ Occupational Safety and Health Law Project represents AFL-CIO ○ Intervenors: Halogenated Solvents Industry Alliance (HSIA), American Chemistry Council (ACC), and N-Methylpyrrolidone Producers Group • <u>9th Cir No. 20-73276</u>: State of New York, District of Columbia, State of Hawai'i, State of Illinois, State of Maine, State of Maryland, Commonwealth of Massachusetts, State of Minnesota, State of New Jersey, State of Oregon, State of Rhode Island, State of Vermont, City of New York <p>**The cases were consolidated in the 9th Circuit on 11/24/20; No. 20-72091 is the lead case</p>	YES	YES	YES	Each OGC political appointee is recused from one of the cases that have been consolidated; therefore, none of them may participate. Do not share an options paper about litigation strategy for these cases with any of them because we know that they each have recusal issues. You will have to work with Jim Payne / Avi Garbow instead.
<p>HBCD risk evaluation</p> <ul style="list-style-type: none"> • <u>9th Cir. No. 20-73099</u>: Alaska Community Action on Toxics <ul style="list-style-type: none"> ○ Earthjustice represents Alaska Community Action on Toxics • <u>D.C. Cir. No. 20-1482</u>: International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW <ul style="list-style-type: none"> ○ Occupational Safety and Health Law Project represents UAW • <u>9th Cir. No. 20-73578</u>: California Professional Firefighters; California Communities Against Toxics; Learning Disabilities Association of America; Sierra Club 	NO	NO	Yes (Biden pledge – former client)	<p>Absent an ethics pledge waiver, Marianne cannot participate in any of these cases because they are now consolidated with the two 9th circuit cases from which she is recused.</p> <p>You will need to work with Melissa, Dimple or Jim.</p>

<ul style="list-style-type: none"> ○ Earthjustice represents California Firefighters, California Communities Against Toxics, Learning Disability Association of America, and Sierra Club <p>**The cases were consolidated in the 9th Circuit on 1/22/21; No. 20-73099 is the lead case</p>				
<p>1,4-dioxane risk evaluation</p> <ul style="list-style-type: none"> • <u>9th Cir. No. 21-70162</u>: Environmental Defense Fund; Sierra Club; Environmental Working Group <ul style="list-style-type: none"> ○ Shute, Mihaly & Weinberger LLP represents EDF, Sierra Club, and Environmental Working Group • <u>9th Cir. No. 21-70194</u>: Center for Environmental Health; Advance Carolina; Cape Fear River Watch; Clean Cape Fear; Democracy Green; Haw River Assembly; Toxic Free NC <ul style="list-style-type: none"> ○ Robert Sussman, Sussman & Associates, represents Center for Environmental Health; Advance Carolina; Cape Fear River Watch; Clean Cape Fear; Democracy Green; Haw River Assembly; Toxic Free NC • <u>DC Cir. No. 21-1057</u>: International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW <ul style="list-style-type: none"> ○ Occupational Safety and Health Law Project represents UAW ○ **Case has been transferred to 9th Circuit and all cases will likely be consolidated 	NO	NO	YES (Biden pledge – former client)	As of right now, you can work with Marianne on 9 th Cir. No. 21-701962 and DC Cir. No. 21-1057 but not 9 th Cir. No. 21-70162. Once the cases are consolidated, however, she will have to recuse from all of them.

I take Jim's comments below to mean that he and Avi are prepared to make decisions regarding the methylene chloride risk evaluations. Terrific! But if the 1,4-dioxane risk evaluation cases are consolidated, then he/Avi will need to step in there, too. Until that happens, though, you can work with Marianne (as your deputy) on those cases, and can work with Melissa, Dimple or Jim on the HBCD risk evaluations. You have already ascertained that none of the politicals has a recusal issue with the asbestos.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Payne, James (Jim) <payne.james@epa.gov>

Sent: Tuesday, March 16, 2021 8:52 PM

To: Cole, Joseph E. <cole.josephe@epa.gov>

Cc: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: Re: (b) (5)

Avi and I continue to remain available for decision, where recusals preclude other OGC appointees. As to OGC appointees, you and Justina are conferring, at least about Marianne and Melissa?

(b) (5)

Sent from my iPhone

On Mar 16, 2021, at 7:40 AM, Cole, Joseph E. <cole.josephe@epa.gov> wrote:

Jim

(b) (5)

(b) (5)

Previously, following Justina's advice, we discussed general legal issues likely present in the risk evaluation cases with Marianne by focusing the information we provided in the discussion in the following way:

Please note that we will not discuss with you any specific party matter from which you are recused under your bar or pledge restrictions. The only specific party matter that we will discuss with you in the context of the TSCA risk evaluations is the asbestos risk evaluation case - ADAO et al. v. EPA et al. (9th Cir. No. 21-70160) – from which you are not recused.

(b) (5)

Thanks.

Joe

Joseph E. Cole
Associate General Counsel
Pesticides and Toxic Substances Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 860-7978

(b) (5)

Clarke, Victoria

From: Koch, Erin
Sent: Tuesday, March 16, 2021 1:05 PM
To: Clarke, Victoria
Cc: Cole, Joseph E.
Subject: RE: Any updates for PTSLO on recusals?

Got it, thanks.

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Tuesday, March 16, 2021 1:03 PM
To: Koch, Erin <Koch.Erin@epa.gov>
Cc: Cole, Joseph E. <cole.josephe@epa.gov>
Subject: RE: Any updates for PTSLO on recusals?

That's correct. Even if she didn't involve herself in the underlying litigation, she's forbidden from working on any specific party matters where a former client or party is present because of her Ethics Pledge obligations. If she was involved in the underlying matter, she would be recused because of her bar obligation.

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
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EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Koch, Erin <Koch.Erin@epa.gov>
Sent: Tuesday, March 16, 2021 12:38 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Cc: Cole, Joseph E. <cole.josephe@epa.gov>
Subject: RE: Any updates for PTSLO on recusals?

Thanks for the quick response. Just to confirm my understanding – that includes cases where Marianne had no involvement herself, right?

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Tuesday, March 16, 2021 12:36 PM
To: Koch, Erin <Koch.Erin@epa.gov>
Cc: Cole, Joseph E. <cole.josephe@epa.gov>
Subject: RE: Any updates for PTSLO on recusals?

Hi Erin,

EarthJustice was a former client of Marianne's. She's recused from any specific party matters, including litigation, where EarthJustice is a party or represents a party. As a result, she is recused from all litigations with EarthJustice for a period of two years. So, yes, she is recused from this case and should not be present when you discuss it.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Koch, Erin <Koch.Erin@epa.gov>
Sent: Tuesday, March 16, 2021 12:22 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Cc: Cole, Joseph E. <cole.josephe@epa.gov>
Subject: FW: Any updates for PTSLO on recusals?
Importance: High

Victoria,

Marianne is invited to a meeting tomorrow at 3 that involves some litigation where EarthJustice is representing one of the parties. I see that EarthJustice is listed as one of her past clients. Can you tell us whether she is recused from the current litigation? The case is *Rural and Migrant Ministry, et al. v EPA* (SDNY 1:20-cv-10645), which is consolidated with *New York v EPA* (SDNY 1:20-cv-10642). The Rural and Migrant Ministry and other petitioners are represented by attorneys from EarthJustice and Farmworker Justice.

Sorry for the urgent request,
Erin

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Friday, March 12, 2021 2:20 PM
To: Cole, Joseph E. <cole.josephe@epa.gov>
Subject: RE: Any updates for PTSLO on recusals?

Hi Joe,

We're working on Marianne's recusal statement – though that won't be completed until she finishes her financial disclosure report. Dimple and Melissa were fairly simple in terms of their recusals, having only one former employer and one former client, but perhaps having more environmental/media litigations. Marianne has many more employers and an extensive client list, though more of her legal work was administrative law.

In any event, for the purposes of the 2-year restrictions in the Pledge or the 1-year restrictions under the Impartiality Regulations for state and local governments:

(b) (5), (b) (6)

[REDACTED]

(b) (5), (b) (6)

With respect to her bar obligations, there are a variety of FOIAs and Administrative Complaints with ECRCO that Marianne is recused from working on – as well as one recent litigation - *Californians for Renewable Energy v. EPA*, case no. 4:15-cv-03292-SBA.

Victoria Clarke
Attorney-Advisor
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EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Cole, Joseph E. <cole.josephe@epa.gov>
Sent: Thursday, March 11, 2021 1:39 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: Any updates for PTSLO on recusals?

Hi Victoria,

(b) (6)

I'm checking in on any updates on Marianne's recusal issues. We continue to struggle every day with whether or not we can discuss certain issues with Marianne. Unless I've missed something, I have not seen any additional info such as we received on Melissa and Dimple with regard to Marianne's recusals. Based on what we've heard, and what you shared with me, we're being wary of discussing any issues that might involve NRDC, Earthjustice, and Sierra Club; however, we realize that there may be more to it than just that and that there may even be some qualifications related to past employers, etc.

I believe that PTSLO is the only environmental media office working with Marianne, so I think we are the office most affected by potential recusal issues. We received the attached advice that may be helpful in a similar situation with Marianne, but it does not address the fundamental question of specificity as to her recusals that we need to know for other scenarios. Thanks for your help and we look forward to hearing from you on this.

Joe

Joseph E. Cole
Associate General Counsel
Pesticides and Toxic Substances Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 860-7978

From: [Clarke, Victoria](#)
To: [Engelman-Lado, Marianne](#)
Subject: RE: Briefing Paper (b) (5)
Date: Monday, March 01, 2021 8:06:00 AM

Hi Marianne,

If (b) (6) was a client of yours between January 31, 2019 and January 31, 2021, then yes, under the Biden Ethics Pledge, you would be unable to work on the Flint Litigation because of (b) (6) as a party to the litigation. You would be recused from working on the Flint litigation until January 31, 2023, unless you received a Pledge waiver. Flint and other litigations aside, you will always be precluded from working on the administrative complaint where you represented (b) (6) because of your bar obligations.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Sent: Friday, February 26, 2021 1:43 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: FW: Briefing Paper (b) (5)

Victoria,

Am I conflicted on the Flint litigation? If memory serves, (b) (6) is also a plaintiff in this litigation.

Thanks,

Marianne

From: Redden, Kenneth <Redden.Kenneth@epa.gov>
Sent: Friday, February 26, 2021 1:39 PM
To: OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Darman, Leslie <Darman.Leslie@epa.gov>; Sisson, Ann <Sisson.Ann@epa.gov>; Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>

Subject: Briefing Paper (b) (5)

Thank you.

From: [Engelman-Lado, Marianne](#)
To: [Cole, Joseph E.](#); [Payne, James \(Jim\)](#); [Fisher, Bethany](#); [Fugh, Justina](#); [Clarke, Victoria](#)
Cc: [Razor, Lila](#)
Subject: RE: Briefing paper for tomorrow's (b) (5) meeting
Date: Friday, March 26, 2021 7:28:03 AM

Thanks.

From: Cole, Joseph E. <cole.josephe@epa.gov>
Sent: Thursday, March 25, 2021 8:00 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Fisher, Bethany <fisher.bethany@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Cc: Razor, Lila <Razor.Lila@epa.gov>
Subject: RE: Briefing paper for tomorrow's (b) (5) meeting

Marianne,

We do not intend to discuss any specific party matter from which you are recused; this briefing is on (b) (5)

In any event, we checked previously with the Ethics Office on your recusals related to TSCA risk evaluation litigation. As indicated in the meeting invitation, PTSLO will not discuss with you any specific party matter from which you are recused under your bar or pledge restrictions. If we were to discuss a specific party matter (and do not intend to), the only specific party matter that may be discussed in the context of the TSCA risk evaluations is the asbestos risk evaluation case - *ADAO et al. v. EPA et al.* (9th Cir. No. 21-70160) from which you are not recused.

I've included Justina and Victoria in case there is anything else to add. Thanks.

Joe

Joseph E. Cole
Associate General Counsel
Pesticides and Toxic Substances Law Office
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U.S. Environmental Protection Agency
(202) 860-7978

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Sent: Thursday, March 25, 2021 4:31 PM

To: Payne, James (Jim) <payne.james@epa.gov>; Fisher, Bethany <fisher.bethany@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>

Cc: Razor, Lila <Razor.Lila@epa.gov>

Subject: RE: Briefing paper for tomorrow's (b) (5) meeting

To be extra cautious: am I conflicted on this briefing on (b) (5)

Thanks!

From: Payne, James (Jim) <payne.james@epa.gov>

Sent: Thursday, March 25, 2021 3:01 PM

To: Fisher, Bethany <fisher.bethany@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Cc: Razor, Lila <Razor.Lila@epa.gov>

Subject: Re: Briefing paper for tomorrow's (b) (5) meeting

Flagging that I believe I now have an Adm'r briefing on another matter during this time tomorrow, on a topic where others are recused. I can check afterward here w Joe or Bethany.

Sent from my iPhone

On Mar 25, 2021, at 12:25 PM, Fisher, Bethany <fisher.bethany@epa.gov> wrote:

Good afternoon,

Attached please find the briefing paper for tomorrow's 10:30 am meeting with Marianne and Jim entitled (b) (5)

Bethany Fisher
EPA Office of General Counsel
Pesticides and Toxic Substances Law Office
202-564-2672

<(b) (5)>x>

From: [Engelman-Lado, Marianne](#)
To: [Fugh, Justina](#); [Payne, James \(Jim\)](#)
Subject: RE: Call request
Date: Thursday, March 25, 2021 7:59:17 AM

Many thanks.

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, March 25, 2021 1:18 AM
To: Payne, James (Jim) <payne.james@epa.gov>; Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Subject: RE: Call request

Well, it's okay to take the call to find out what he wants and, as Marianne indicates, provide a general answer. What might be different is if he wants Marianne to speak to the client's board of directors or if he invites her to speak at a firm-arranged event that they will "market" just to their own clients. But I have confidence that Marianne can deftly deal with this soft request!

justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Wednesday, March 24, 2021 11:30 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Re: Call request

Justina?

Sent from my iPhone

On Mar 24, 2021, at 10:47 AM, Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov> wrote:

Jim,

I received this request for a meeting. (b) (5)

(b) (5)

Any advice on this?

Thanks,

Marianne

From: Merrigan, John <john.merrigan@dlapiper.com>
Sent: Wednesday, March 24, 2021 10:40 AM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Jebeyli, Stephanie (b) (6)
Subject: Call request

Dear Ms. Engelman-Lado, my name is John Merrigan. I am a lawyer at DLA Piper here in Washington. Congratulations on your exciting assignment in EPA.

As you can imagine, there is a lot of interest in the initiatives you will be helping President Biden with. We have a number of clients who are trying to figure out how they can prepare to support your program, both in terms of compliance and innovation.

One of our clients is preparing for its annual board meeting next week. They would like us to provide some background so the directors can understand where the administration is heading, the timetable in process you envision, and how our client can position itself to play a constructive role.

If you have a few minutes to spare, it would be a great help if we can hear your description of how things are progressing. I can be reached at (b) (6). (I left you a message at the Department as well.)

Thanks a lot for considering this request.
Best, John Merrigan

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From: [Engelman-Lado, Marianne](#)
To: [Clarke, Victoria](#)
Cc: [Fugh, Justina](#); [Griffo, Shannon](#)
Subject: RE: Draft Pledge Waiver
Date: Thursday, April 01, 2021 1:40:40 PM

I hadn't yet, so thanks for the reminder. I'll put it on my list for later today.

Thanks,

Marianne

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Thursday, April 1, 2021 12:08 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Draft Pledge Waiver

Hi Mariannel

I'm following up on this. Have you had a chance to review the draft pledge waiver?

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Clarke, Victoria
Sent: Monday, March 29, 2021 2:25 PM
To: Engelman-Lado, Marianne <[EngelmanLado.Marianne@epa.gov](#)>
Cc: Fugh, Justina <[Fugh.Justina@epa.gov](#)>; Griffo, Shannon <[Griffo.Shannon@epa.gov](#)>
Subject: Draft Pledge Waiver

Hi Marianne,

Happy Monday! Shannon prepared your draft pledge waiver (b) (5)

Before we can submit this to the White House for its review, we need you to take a look at the draft. In addition to reviewing the pledge waiver for factual accuracy, there are a few comments in the document that we need you to address.

Shannon is taking well-deserved leave this week, so you can reach out to Justina – or to me! – if

you have any questions.

Thank you!
Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: [Marianne Lado](#)
To: [Clarke, Victoria](#)
Cc: [Engelman-Lado, Marianne](#)
Subject: Re: Ethics question
Date: Monday, February 15, 2021 4:56:56 PM

Perfect. Thanks.

Sent from my iPhone
Apologies for brevity and errors

On Feb 15, 2021, at 4:44 PM, Clarke, Victoria <clarke.victoria@epa.gov> wrote:

If you're doing this in your personal capacity, then the cleanest approach would be to supply your personal phone number and home address – that way, you'll have a clean cut between your work responsibilities and your personal ones. If the individual has to state your place of employment, they're allowed to state the facts and that you work at EPA.

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Marianne Lado (b) (6)
Sent: Monday, February 15, 2021 4:40 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Cc: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Subject: Re: Ethics question

This all makes sense and at this point, I would making the recommendation in my personal capacity.

How would I handle the signature line with contact info? Should I just include personal contact info or include my EPA contact info?

Thanks,

Marianne

From: "Clarke, Victoria" <clarke.victoria@epa.gov>

Date: Monday, February 15, 2021 at 3:38 PM

To: Marianne Lado (b) (6)

Cc: "Engelman-Lado, Marianne" <EngelmanLado.Marianne@epa.gov>

Subject: RE: Ethics question

Hi Marianne,

No, there is no bar in you providing a recommendation. The only consideration I have is whether you're going to provide a recommendation in your personal capacity or in your official EPA capacity (the distinction being that the EPA capacity allows you to use your official title in your signature and official EPA letterhead, but there are conditions that apply).

You can provide a recommendation in your personal capacity, but you can't use Agency resources to do it or use official EPA stationary, but if necessary, you can reference your position in the body of the email – you just can't make it seem like you are suggesting EPA is recommending this individual for employment.

If you want to sign a letter using Agency letterhead, then we need to look at 5 C.F.R. 2635.702(b), which says: "...He may sign a letter of recommendation using his official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom he has dealt in the course of Federal employment or whom he is recommending for Federal employment." This isn't an individual that you've dealt with in the course of your Federal employment, but this individual *is* seeking federal employment with the judicial branch.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Marianne Lado (b) (6)

Sent: Monday, February 15, 2021 1:07 PM

To: Clarke, Victoria <clarke.victoria@epa.gov>

Cc: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>

Subject: Ethics question

Victoria,

Is there any bar to my providing recommendations?

Thanks,

Marianne

Sent from my iPhone

Apologies for brevity and errors

Begin forwarded message:

From: (b) (6)
Date: February 13, 2021 at 10:27:11 PM EST
To: Marianne Engelman Lado (b) (6)
Subject: hello! and congratulations!

Hi Marianne. I hope this email finds you and your family well during these difficult times. First, congratulations on your new position at the EPA. It's incredibly exciting, and I look forward to seeing what wonderful things you will be doing there.

I'm reaching out now because I'm applying for an open federal judicial appointment, and was wondering if I could list you as a reference for my time at NYLPI. If so, could you tell me what work address and phone number I should provide on the application?

Thanks very much. And the best of luck on your transition!

Best,

■

From: [Engelman-Lado, Marianne](#)
To: [Clarke, Victoria](#)
Subject: RE: Follow Up
Date: Wednesday, March 10, 2021 5:03:24 PM

Thanks.

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Wednesday, March 10, 2021 5:01 PM
To: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Subject: RE: Follow Up

Hi Marianne,

The White House, Office of Government Ethics, and Office of Personnel Management only recently released their waiver guidance and delegation authority to the Agency. So, to the extent consistent with that authority, and now that I'm back in the country and working full time, I can better discuss the possibility of waiver more substantively with Jim and Justina.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Engelman-Lado, Marianne <[EngelmanLado.Marianne@epa.gov](#)>
Sent: Wednesday, March 10, 2021 4:56 PM
To: Clarke, Victoria <[clarke.victoria@epa.gov](#)>
Subject: Follow Up

Victoria,

I wanted to check in on the status of any discussion with the White House on a waiver on conflict issues with NRDC.

Many thanks,

Marianne

From: [Hoffer, Melissa](#)
To: [Engelman-Lado, Marianne](#); [Payne, James \(Jim\)](#); [Fugh, Justina](#)
Subject: RE: for signature, please
Date: Wednesday, April 14, 2021 9:40:41 AM

Fantastic! Thanks, Justina.

From: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Sent: Wednesday, April 14, 2021 8:16 AM
To: Payne, James (Jim) <payne.james@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Subject: RE: for signature, please

Many thanks!

Best,

Marianne

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Tuesday, April 13, 2021 10:57 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Subject: Re: for signature, please

Nicely done Justina!

Begin forwarded message:

From: "Fugh, Justina" <Fugh.Justina@epa.gov>
Date: April 13, 2021 at 10:33:20 PM EDT
To: "Payne, James (Jim)" <payne.james@epa.gov>
Subject: for signature, please

Hi Jim,

We got confirmation tonight that the White House concurs in EPA's granting a limited waiver for Marianne Engelman-Lado. Under this waiver, she will be permitted to work on specific party matters in which her former client, NRDC, is a party or represents a party so long as she did not previously work on that same matter. As we've discussed, her prior work with NRDC focused only on a handful of FOIA cases in the Title VI context. (b) (5)

(b) (5)

Once you sign, I will distribute it appropriately, including to NFO that has a lovely place set aside to post it within the 10 day timeframe. And I'll be sure to send the signed waiver along to OGE.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA |
Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal
Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip
code) | phone 202-564-1786 | fax 202-564-1772

<request for pledge waiver for Marianne Engelman-Lado for signature.pdf>

From: [Marianne Lado](#)
To: [Fugh, Justina](#)
Cc: [Clarke, Victoria](#)
Subject: Re: Greetings form the EPA Ethics Office!
Date: Tuesday, January 19, 2021 1:09:29 AM

Phenomenal. This has been keeping me up at night.

Many thanks.

From: "Fugh, Justina" <Fugh.Justina@epa.gov>
Date: Monday, January 18, 2021 at 11:45 PM
To: (b) (6)
Cc: "Clarke, Victoria" <clarke.victoria@epa.gov>
Subject: RE: Greetings form the EPA Ethics Office!

Oh, I see: you want to know about the likelihood of our granting you approval of the outside activity for Yale and VLS. The answer to that is we'll be able to grant that right away so that you have a "glide" period to allow for extrication. Since you're starting as a provisional Schedule C, you can still receive compensation for those activities.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Marianne Lado (b) (6)
Sent: Monday, January 18, 2021 11:38 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: Re: Greetings form the EPA Ethics Office!

Many thanks, and I'll follow the process for the approval of speaking engagements. Helpful to know.

Just to be clear: I'm hoping to get clarity on approval for my outside activities at Yale and Vermont Law School in the few weeks after Inauguration Day, given that I'll have to go through a process of notifying my clients, withdrawing from cases, and transferring responsibilities once the announcement has been made publicly. From our conversation, I heard that it was understood that there would need to be a transition period, but I wanted to confirm. In the alternative, I suppose I would have to start at EPA later because there's simply no way to instantaneously withdraw from cases, etc.

Many thanks, again,

Marianne

From: "Fugh, Justina" <Fugh.Justina@epa.gov>

Date: Monday, January 18, 2021 at 7:31 PM

To: (b) (6) "Clarke, Victoria"
<clarke.victoria@epa.gov>

Subject: RE: Greetings form the EPA Ethics Office!

Hi Marianne,

You will have to seek advice from the PTT or, after the inauguration, from the EPA Chief of Staff or White House Liaison about disclosure of your imminent position with the Agency. I simply do not know what their policy will be. If you want me to guess, though, then I would expect the cloak of confidentiality lifts after the inauguration because, at that point, you are joining the Administration itself.

With respect to the speaking engagements in your personal capacity, EPA's supplemental regulations at 5 CFR 6401.103(a)(5)(ii) set forth how to seek approval of an outside activity. You will send an email to your Deputy Ethics Official (who is Victoria Clarke), after obtaining the concurrence of the Principal Deputy General Counsel. Your note should address the following:

- name, title and grade;
- the nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;
- the name and business of the person or organization for which the work will be done (in cases of self-employment, indicate the type of services to be rendered and estimate the number of clients or customers anticipated during the next six months);
- the estimated time to be devoted to the activity;
- whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);
- a statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;
- the basis for compensation (e.g., fee, per diem, per annum, etc.)
- a statement that you have read, are familiar with, and will abide by the restrictions described in 5 CFR Part 2635 ([Subpart H on "Outside Activities"](#)) and Section 6401.103 ([EPA's Supplemental Regulations](#)); and
- an identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Marianne Lado (b) (6)

Sent: Monday, January 18, 2021 5:31 PM

To: Clarke, Victoria <clarke.victoria@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>

Subject: Re: Greetings form the EPA Ethics Office!

Thanks so much. This is very helpful.

I'm hoping to clarify two questions, both of which related to the nature and timing of prior approval.

First, as to the following direction:

1. "This means that Non-Career SES and Schedule C appointees may have outside positions, provided that they seek prior approval from EPA Ethics for the outside activity consistent with EPA's Supplemental Ethics Regulations at [5 C.E.R. 6401.103](#)."

As you know, I'll need to withdraw from cases, inform clients and co-counsel, and transfer cases in accordance with rules of ethics, once the information about my position is made public. My ability to create a transfer plan and identify an Interim Director to take on my cases was hampered by the confidentiality requirement. What do I need to do to get prior approval to make this transition at Vermont Law and Yale over the coming weeks? This is perhaps most pressing.

Second, as to the speaking engagements, what do I need to do to receive prior approval?

Many thanks,

Marianne

From: "Clarke, Victoria" <clarke.victoria@epa.gov>

Date: Sunday, January 17, 2021 at 6:26 PM

To: "Fugh, Justina" <Fugh.Justina@epa.gov>, (b) (6)

Subject: RE: Greetings form the EPA Ethics Office!

Hi Marianne,

It was lovely to speak with you on Tuesday. I wanted to follow up with you on our conversation and give you a written overview of what we discussed, as well as provide answers to your questions about your pre-existing speaking engagements and written articles.

Generally speaking, you'll be subject to two (possibly three) interrelated but different ethical constructs: (1) the federal ethics laws and regulations, (2) your bar rules, and (3) most likely a Biden Ethics Pledge set forth by Executive Order. This note will provide you with the broad-brush strokes of what we envision as your ethical obligations.

FINANCIAL CONFLICTS OF INTEREST

1. You will be required to fill out a public financial disclosure report to help us to ascertain your potential conflicts issues. Put simply, we will be looking at your ownership interests in stocks, bonds, sector mutual funds as well as any fiduciary positions that you hold in entities. This form, called the OGE-278e, is a "wretched and exacting" document that you will fill out electronically in a system called INTEGRITY. You have been assigned a report using your personal email address

for now; later, when you get an EPA email address, we'll change your user ID.

2. During our discussion, you weren't sure of the full extent of your financial holdings. That is all right, but we do ask that you start filling out your OGE-278e in INTEGRITY as soon as possible so we can assess any financial conflicts of interest.
3. I highly recommend [OGE's INTEGRITY Guide](#). Keep this open as you fill out the report, because it will not only show you how each entry should look, but it will also explain what needs to be reported and why.

LOSS OF IMPARTIALITY

4. Absent information Biden pledge and further restrictions, you will have "covered relationships" with Vermont Law School and Yale University under the federal ethics regulations at [5 C.F.R. § 2635.502\(b\)\(1\)\(iv\)](#). You also have a "covered relationship" with any individual or entity that you have represented as an agent or attorney. *Id.* For one year, you will not be permitted to work on any [specific party matter](#) in which Vermont Law School, Yale University, or any individual whom you represented personally is a party or represents a party to the matter unless you first obtain written authorization from the EPA Ethics Office. [See 5 C.F.R. § 2635.502\(d\)](#).
 1. For the purposes of your recusal statement, I will need the names of any individual that you took on or had as a client within the past year, if that individual is likely to have any business before the Agency.
5. In addition to your spouse, you have (b) (6). You have a covered relationship with your spouse and your child for the purposes of [5 C.F.R. 2635.502\(b\)\(1\)\(ii\) and \(iii\)](#).
 1. You may not work on a specific party matter in which your child is a party or represents a party to the matter, unless you seek written authorization from EPA Ethics.
 2. With respect to your spouse, you may not work personally and substantially on a specific party matter in which your spouse is a party or represents a party to the matter unless you first seek written authorization from EPA Ethics.
6. For definitions of "specific party matter" and "personal and substantial participation," please see [5 C.F.R. § 2641.201](#). Although I cite the post-employment regulations, these definitions are the most recent articulation of the concepts by the Office of Government Ethics and apply also to the impartiality and financial conflict of interest regulations.

RECUSALS

7. I have started to draft your recusal statement though I cannot finalize it until you submit your financial disclosure report. The recusal statement will address Vermont Law School, Yale University, the legal clinic you supervise, and any clients to whom you personally provided legal services, as well as any specific party matters that you worked on personally and substantially that are still pending at EPA. I have already incorporated the CARE v. EPA case into your recusal statement as well as FOIA-2021-000375 given your participation.
8. As we discussed, you understand that you have bar obligations regarding those cases anyway.

APPOINTMENT RESTRICTIONS

Your initial type of appointment at EPA will be a temporary Schedule C for now. We in EPA Ethics don't know when you will be converted to a Non-Career SES. But this appointment distinction is important because the ethics rules will apply differently depending on your appointment type. I want to clarify what this means for you, in addition to providing you information about outside employment guidance that we very recently received from the Presidential Transition Team.

9. Per the PTT, non-PAS political appointees may have outside positions that are consistent with federal ethics regulations, including the Agency's ethics regulations.
10. This means that Non-Career SES and Schedule C appointees may have outside positions, provided that they seek prior approval from EPA Ethics for the outside activity consistent with EPA's Supplemental Ethics Regulations at [5 C.F.R. 6401.103](#).
11. But once you convert to non-career SES, you will be subject to the following additional restrictions:
 1. You will be subject to the outside earned income cap that is set each January. As of January 2021, that amount is \$29,595. See [5 C.F.R. § 2635.804\(b\)](#) and [5 C.F.R. § 2636.304](#). This amount changes each year.
 2. You may never receive compensation for practicing a profession that involves a fiduciary relationship; affiliating with or being employed by a firm or other entity that provides professional services involving a fiduciary relationship; or teaching without prior approval. See note to [5 C.F.R. § 2635.804\(b\)](#) and [5 C.F.R. § 2636.305](#).
 3. You may, however, be permitted to serve as an officer or member of the board of any association, corporation or other entity, but cannot be compensated for such service. See [5 C.F.R. § 2636.306](#).
 4. A Schedule C appointee is restricted only from accepting compensation for any teaching, speaking or writing that relates to their official duties, which includes 1) matters to which the employee is presently assigned or has been assigned in the previous year; or 2) any ongoing or announced policy, program, or operation of the Agency. [5 C.F.R. § 2635.807\(a\)\(2\)\(i\)\(E\)\(1\)-\(2\)](#). However, once you are converted to non-career SES, you will not be able to receive compensation at all for any teaching, speaking or writing that relates to your official duties or even to the general subject matter area, industry, or economic sector primarily affected by the programs and operations of the Agency. [5 C.F.R. § 2635.807\(a\)\(2\)\(i\)\(E\)\(3\)](#).
 5. You may not receive compensation for any other teaching unless specifically authorized in advance by the DAEO. See [5 C.F.R. § 2636.307](#).

These distinctions are important for you given your teaching obligations that may still be lingering when you join the Agency. If those obligations are still present when you convert to Non-Career SES, you will not be able to accept further compensation for teaching in the subject matter area, industry, or sector that is affected by the programs and operations of the EPA. That would include, for example, environmental law or courses on environmental justice. Please be mindful of this nuance and coordinate with the White House Liaison and EPA's Office of Human Resources to ensure that you are able to

comply with the ethics obligations of the new position. You may, for example, want to consider a delay in your conversion to Non-Career SES until you have finished your teaching obligations. Simply accepting compensation up front may not be sufficient to meet your ethics obligations as Non-Career SES.

SPEAKING ENGAGEMENTS

Turning to your current speaking engagements, you provided me with a list of 7 upcoming engagements that you anticipate fulfilling in your “individual” capacity. By that, I assume you mean that you will be speaking in your **personal capacity**. We have two types of capacities in federal ethics.

1. Personal capacity means you are acting as a private citizen of the United States and represent no one’s interests by your own. When doing something in your personal capacity, you must use your own time and resources. You may not use government time or resources, including subordinates. You may not use nonpublic or confidential information. You may include, or permit the sponsor or host to include, your EPA position or affiliation as a biographical detail, but it cannot be your sole identifying detail. If you do refer to EPA, then you must include a clear disclaimer that you are not speaking on behalf of the US Government or the Agency but rather in your personal capacity.
2. Official capacity means you are acting within the scope of your EPA duties, under the auspices of your EPA supervisor, and you are representing EPA. You may refer to your EPA position or affiliation without a disclaimer and can use EPA time and resources in furtherance of the activity. However, you cannot share nonpublic or confidential information.
- 3.

UPCOMING EVENT OR ACTIVITY	EPA ETHICS ANSWER AND EXPLANATION
January taping for subsequent airing: podcast with Environmental & Energy Law Program at Harvard Law School, focusing on civil rights enforcement in the EJ context.	If you complete the taping before joining EPA, then there is no federal ethics issue, and you may accept compensation. However, if you tape your submission after you join EPA, then you may not be able to accept compensation and will need to seek prior approval of this outside activity from EPA Ethics. Given the subject matter and how soon it arises in the Biden Administration, Justina advises that it’s unlikely to be considered part of official duty.
Thursday, January 28 th , Temple B’Nai Torah, panel entitled, “Relating to our planet: Environmental Justice, Shmita, and Making Positive Change,” a part of the Big Bold Jewish Climate Festival, (https://www.jewishclimatefest.org/).	You may present in your personal capacity but must seek prior approval of this outside activity from EPA Ethics. Given the subject matter and how soon it arises in the Biden Administration, Justina advises that it’s unlikely to be considered part of official duty.
Tuesday, Feb. 2 guest lecture in Resilience and Sustainability class at Vermont Law School.	Because you will have a covered relationship with Vermont Law School, you can do this lecture only on your own time in your personal capacity. You will need to seek prior approval from EPA Ethics and will not be able to accept compensation.
Wednesday, Feb. 10 in the evening: guest lecture at UCLA Environmental Justice class.	You may present in your personal capacity but must seek prior approval of this uncompensated outside activity from EPA Ethics. If you wish to present in your official capacity, then the invitation will have to be

	reissued by UCLA.
Saturday, Feb. 27: Community Visions for Environmental Justice Organizing conference, a joint effort between Duke's Environmental Law & Policy Clinic, Howard Law School's Environmental Justice Center, Vermont Law School's Environmental Justice Clinic and Environmental Justice Law Society, and the Yale School of the Environment. I'm scheduled to moderate a panel discussed on "Seeking Justice Through Policy: Environmental Justice Legislation and Executive Action."	Because you will have a covered relationship with Vermont Law School and Yale University, you can do this lecture only on your own time in your personal capacity. You will need to seek prior approval from EPA Ethics and will not be able to accept compensation.
Wednesday, March 10, Texas Environmental Law Journal Symposium, Proving Discrimination in Title VI Challenges to Environmental Programs, at UT Austin.	You may present in your personal capacity but must seek prior approval of this uncompensated outside activity from EPA Ethics. If you wish to present in your official capacity, then the invitation will have to be reissued by UT Austin.
Thursday, March 25 th , Northeast Summit for a Sustainable Built Environment (NESSBE), talk focused on equity work with the GC3 in Connecticut.	You may present in your personal capacity but must seek prior approval of this uncompensated outside activity from EPA Ethics. If you wish to present in your official capacity, then the invitation will have to be reissued to you.

You had also provided me with a draft article that will be published in an environmental law journal. This was a piece that was drafted prior to your appointment at EPA, though it will be published during a time while you are at EPA. If you refer to your EPA position and title, then the article must include the following disclaimer::

This work is not a product of the United States Government or the United States Environmental Protection Agency. The author is not doing this work in any governmental capacity. The views expressed are her own and do not necessarily represent those of the United States or the US EPA.

Alternatively, you may decide not to reference EPA at all, and then no disclaimer is necessary. Please note that this advice is predicated on the assumption that you will not be compensated and that you will not be working on or editing the article after your employment with EPA. If you need to work substantively on the article after joining federal service, then you may need to seek prior approval from us.

I apologize for how long this email has become, but I hope it helps explain your ethics obligations and will provide you with some solid guard rails until we can formalize a recusal statement for you.

If you have any questions, please don't hesitate to reach out. If you're amenable, I'd be happy to speak with you tomorrow to answer any questions you have or go over anything in more detail.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency

Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Sunday, January 17, 2021 1:35 PM
To: Marianne Lado (b) (6)
Cc: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: Greetings form the EPA Ethics Office!

Marianne,

Victoria drafted a response to you that I'm reviewing over the weekend. We have to take into account the news that non-career SES appointees may be permitted to have outside positions, subject to ethics rules. And those ethics rules have to do with prior approval of an outside activity and any possible compensation. Victoria will be in touch soon.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Marianne Lado (b) (6)
Sent: Sunday, January 17, 2021 12:16 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: Re: Greetings form the EPA Ethics Office!

Victoria & Justina,

I was hoping to touch base about my responsibilities starting day 1 and my transition out of pre-existing obligations. My conversation with you was reassuring and I'm relieved that I don't have to have a hard stop on Wednesday. But I want to make sure my transition plans don't run afoul of any rules.

As you know, I am leaving a position where I run and supervise a legal clinic. Once the position is public, I can give notice and in short order resign from many responsibilities. At the same time, I'm attorney of record on cases and I supervise staff and students, and I am quietly trying to develop a transition plan. I think we're pulling together a plan to cover the clinic, but it'll take a few weeks once staffing is public to notify clients, withdraw from all of the cases, and get someone fully on board. I'll need to juggle new responsibilities with the obligations related to the transition at Vermont Law School, but wanted to reach out to you to clear any ethical issues.

Many thanks,

Marianne

Marianne Engelman Lado

From: "Fugh, Justina" <Fugh.Justina@epa.gov>

Date: Sunday, January 10, 2021 at 11:43 PM

To: (b) (6)

Cc: "Clarke, Victoria" <clarke.victoria@epa.gov>

Subject: Greetings form the EPA Ethics Office!

Hi there,

My name is Justina Fugh, and I'm the Director of the EPA Ethics Office. I understand from Sinceré Harris that you will be joining EPA on or about 1/20/21 as a non-career SES appointee in the position of Deputy General Counsel for Environmental Initiatives. Congratulations! Given this type of appointment, you are required by the Ethics in Government Act of 1978 to file the Public Financial Disclosure Report. I have already assigned that report to you, so that will explain the message from integrity.gov.

I'm sorry to introduce myself by email, but we want to encourage you to complete the financial disclosure report as soon as possible. What follows is a long, chatty email with tons of information. Victoria Clarke has already reached out to you to start the conversation about your ethics obligations, including possible recusals issues given your previous employment and bar issues. We really are here to help you.

DEADLINE FOR SUBMITTING THE REPORT

Technically, your "new entrant" report is due no later than 30 days from your effective date at EPA or 2/19/21. If you need additional time, you must contact ethics@epa.gov before your deadline expires. There is a limit to how much additional time we can give you, and we can't grant any extension after the fact.

THE FINANCIAL DISCLOSURE REPORT, OGE-278e

EPA uses an electronic filing system (www.INTEGRITY.gov) for the public financial disclosure reports that is operated and secured by the U.S. Office of Government Ethics (OGE). You are required by law to complete the form, and we will use it to determine whether you have any financial conflicts of interest or other ethics concerns.

We created an account for you in INTEGRITY and have assigned you a "new entrant" report. Your filer category is "non career SES" and your filer status is "full time." We have pre-populated the address field with EPA's address because, well, this is a public form and we don't want anyone to know your personal

address. For help in INTEGRITY, check out the OGE [Public Financial Disclosure Guide](#). The email from INTEGRITY.gov will provide you with specific instructions to log into the federal government's max.gov site, the gateway to INTEGRITY. If you didn't receive your account notification, then check your clutter box for messages from INTEGRITY.gov, or contact ethics@epa.gov.

There are several important things to know about the OGE-278e: (1) it is a public form (which means that anyone can ask for a copy of your form, but Congress repealed the requirement for public posting to the internet); (2) you have to fill it out every year you are in this position; (3) when you leave the position, you will have to file a termination report; and (4) you will be subject to a late filing fee of \$200 for not filing your report timely.

REQUIREMENT TO ANSWER ANY FOLLOW UP QUESTIONS WITHIN 14 DAYS

We will review your report as quickly as possible. If we have any questions, then we will notify you. At that point, you will have 14 calendar days to respond and resubmit your report back to us with any necessary changes.

REPORTING TRANSACTIONS

While you are in this position, you are a public financial disclosure filer who is subject to certain additional requirements of the Ethics In Government Act as amended by the STOCK Act. You will be required to report any purchase, sale or exchange of stocks, bonds, commodities futures or other forms of securities when the amount of the transaction exceeds \$1000. Use INTEGRITY to disclose reportable transactions within 30 days of receiving notification of the transaction, but not later than 45 days after the transaction occurs. You will have to report transactions that occur within brokerage accounts, managed accounts, or other investment vehicles that you own or jointly own with your spouse or another person, as well as transactions of your spouse or dependent children. We will go over this requirement during your initial ethics training, but I've also attached our reminder about late fees and when to report transactions. Remember, you are responsible for reporting transactions, even if you have a managed account, and you will be fined for a tardy periodic transaction report.

YES, YOU CAN BE FINED FOR NOT FILING PROMPTLY

It's worth repeating that you can be fined \$200 for not meeting the submission deadline (and you still have to file that report). PLEASE pay attention to your filing requirements! If you need an extension, then you must ask before your deadline expires. There is a limit to how much additional time you may receive.

HELPFUL HINTS FOR FILLING OUT THE FORM

1. This is a wretched and exacting form, so just know that you will have to provide a lot of information.
2. You will get three different places to report assets: filer's employment-related assets and income, spouse's employment related assets and income, and other assets and income. You must report assets for yourself, your spouse and any dependent children. We don't really care where you report your assets, just that you do report them all someplace.

3. You must include any investment asset that is worth more than \$1000. Include any income from any source that exceeded \$200 during the reporting period (including outside jobs or hobbies, rental income). Include any cash/savings accounts that have more than \$5000.
4. Enter each asset separately. Don't lump items together on one line. Be sure to provide the valuation of the asset AND the amount of the income. For assets that aren't mutual funds, you also have to report the type of income (e.g., dividends, cap gains).
5. For 401(k) or IRA plans, provide the name of each of the underlying assets. Don't just write "Vanguard IRA" or "mutual fund." You must specify each asset separately and give the valuation but, for these assets in tax deferred instruments, you do not need to provide the amount of income accrued.
6. Do not report your federal salary, your spouse's federal salary, or Thrift Savings Plan information
7. If you (not your spouse) have any earned income (e.g., outside job, paid pension), you have to report the actual amount of that income.
8. If your spouse works outside of federal service, then include your spouse's employer but not the amount of your spouse's salary. If you are not legally married, do not report your significant other's employer.
9. Don't forget to include any life insurance policies (whole life or variable life) as well as the underlying investments. Do not report term life insurance.
10. If you have nothing to report in a section, be sure to click the "nothing to report" button
11. The various parts of the form have different reporting periods, so please consult the attached "reporting periods" chart. Remember to check out the Office of Government Ethics' [Public Financial Disclosure Guide](#) or to contact OGC/Ethics for help. We know this is a beast of a form, so we really are here to help you.

OTHER ETHICS REQUIREMENTS FOR YOU

HATCH ACT

As a federal employee, you will be "lesser restricted" under the Hatch Act. During your new employee orientation, the ethics staff will go over the Hatch Act, which governs the political activity of government employees. For a refresher, you can familiarize yourself with the Hatch Act as it affects you by reviewing our attached handy chart.

ETHICS TRAINING

As a public financial disclosure filer, you must take one hour of ethics training this year. The new employee training you will have with the ethics staff meets your annual training requirement for this year. Next year, you will take the annual training online.

If you have any questions regarding this message or your obligations, then please let Victoria or me know.

Cheers,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North,
William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip
code) | phone 202-564-1786 | fax 202-564-1772

From: [Engelman-Lado, Marianne](#)
To: [Clarke, Victoria](#); [Marianne Lado](#)
Cc: [Keith, Jennie](#)
Subject: RE: Greetings form the EPA Ethics Office!
Date: Thursday, March 04, 2021 9:10:56 AM

Thanks.

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Thursday, March 4, 2021 9:08 AM
To: Marianne Lado (b) (6)
Cc: Keith, Jennie <Keith.Jennie@epa.gov>; Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>
Subject: RE: Greetings form the EPA Ethics Office!

Hi Marianne,

Thanks for checking in! Yes, you may indeed participate in UT Austin's Symposium on Title VI Challenges to Environmental Programs in your personal capacity.

- You've said you've already alerted UT Austin they must refer to you by your prior affiliations. I am not exactly sure what that entails (Marianne Engelman-Lado, former Visiting Professor and Director of the Environmental Justice Clinic at Vermont Law School?), but provided that they are not referencing your EPA title and authority as a byline when they identify you as a speaker, then you are in the clear.
- Because you're speaking in your personal capacity, you may not discuss Agency business or share non-public information. If it is in the trade press, then you can discuss it. Folks may try to ask you questions about the Agency and its priorities, but you need to remind the audience that you're not representing the Agency and you are there to share your personal views and experiences.
- Similarly, because you're speaking in your personal capacity, you already know that you are required to use a disclaimer to indicate that you don't speak on behalf of EPA, and you've indicated as much to UT. I think in a previous email, Jennie had a very nice disclaimer that was something like, "Today I am representing an academic perspective and do not represent the EPA or the U.S. Government. My views are my own and do not necessarily represent those of the government."
- If you have to submit a biography or UT wants to include one as part of its materials, you are permitted to reference your EPA employment as one of several biographical details about yourself. It just can't be the *only* biographical detail you provide.
- You also may not use Agency time or resources to further this activity – that includes preparing for and participating in the panel.

With respect to dropping in on the Environmental Law, Policy, and Politics class in your personal capacity, to discuss your personal experiences and work pre-EPA for environmental justice issues, this seems fine, provided that you stick to the rules outlined above.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149

EPA Cell: 202-336-9101

From: Marianne Lado (b) (6)
Sent: Thursday, March 04, 2021 8:09 AM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: Re: Greetings form the EPA Ethics Office!

Victoria,

We're coming up to the date of the next pre-existing commitment we discussed before I arrived to EPA:

Wednesday, March 10, Texas Environmental Law Journal Symposium, Proving Discrimination in Title VI Challenges to Environmental Programs, at UT Austin.

I'd still like to fulfill my commitment by appearing in my personal capacity. I've communicated to the organizers that I should be identified through my prior affiliations and that I'll need to make a disclaimer. This email is intended to seek formal approval.

I also would like to add a short event to our list. Josh Galperin at U. Pittsburgh School of Law asked whether I would join his Environmental Law, Policy, and Politics class for 15-20 minutes, at a date I can determine, according to my schedule, to appear in my personal capacity to discuss my experience, pre-EPA, working on issues of environmental justice.

Many thanks,

Marianne

From: "Clarke, Victoria" <clarke.victoria@epa.gov>
Date: Sunday, January 17, 2021 at 6:26 PM
To: "Fugh, Justina" <Fugh.Justina@epa.gov>, Marianne Lado (b) (6)
Subject: RE: Greetings form the EPA Ethics Office!

Hi Marianne,

It was lovely to speak with you on Tuesday. I wanted to follow up with you on our conversation and give you a written overview of what we discussed, as well as provide answers to your questions about your pre-existing speaking engagements and written articles.

Generally speaking, you'll be subject to two (possibly three) interrelated but different ethical constructs: (1) the federal ethics laws and regulations, (2) your bar rules, and (3) most likely a Biden Ethics Pledge set forth by Executive Order. This note will provide you with the broad-brush strokes of what we envision as your ethical obligations.

FINANCIAL CONFLICTS OF INTEREST

1. You will be required to fill out a public financial disclosure report to help us to ascertain your potential conflicts issues. Put simply, we will be looking at your ownership interests in stocks,

bonds, sector mutual funds as well as any fiduciary positions that you hold in entities. This form, called the OGE-278e, is a “wretched and exacting” document that you will fill out electronically in a system called INTEGRITY. You have been assigned a report using your personal email address for now; later, when you get an EPA email address, we’ll change your user ID.

2. During our discussion, you weren’t sure of the full extent of your financial holdings. That is all right, but we do ask that you start filling out your OGE-278e in INTEGRITY as soon as possible so we can assess any financial conflicts of interest.
3. I highly recommend [OGE’s INTEGRITY Guide](#). Keep this open as you fill out the report, because it will not only show you how each entry should look, but it will also explain what needs to be reported and why.

LOSS OF IMPARTIALITY

4. Absent information Biden pledge and further restrictions, you will have “covered relationships” with Vermont Law School and Yale University under the federal ethics regulations at [5 C.F.R. § 2635.502\(b\)\(1\)\(iv\)](#). You also have a “covered relationship” with any individual or entity that you have represented as an agent or attorney. Id. For one year, you will not be permitted to work on any [specific party matter](#) in which Vermont Law School, Yale University, or any individual whom you represented personally is a party or represents a party to the matter unless you first obtain written authorization from the EPA Ethics Office. [See 5 C.F.R. § 2635.502\(d\)](#).
 1. For the purposes of your recusal statement, I will need the names of any individual that you took on or had as a client within the past year, if that individual is likely to have any business before the Agency.
5. In addition to your spouse, you **(b) (6)**. You have a covered relationship with your spouse and your child for the purposes of [5 C.F.R. 2635.502\(b\)\(1\)\(ii\) and \(iii\)](#).
 1. You may not work on a specific party matter in which your child is a party or represents a party to the matter, unless you seek written authorization from EPA Ethics.
 2. With respect to your spouse, you may not work personally and substantially on a specific party matter in which your spouse is a party or represents a party to the matter unless you first seek written authorization from EPA Ethics.
6. For definitions of “specific party matter” and “personal and substantial participation,” please see [5 C.F.R. § 2641.201](#). Although I cite the post-employment regulations, these definitions are the most recent articulation of the concepts by the Office of Government Ethics and apply also to the impartiality and financial conflict of interest regulations.

RECUSALS

7. I have started to draft your recusal statement though I cannot finalize it until you submit your financial disclosure report. The recusal statement will address Vermont Law School, Yale University, the legal clinic you supervise, and any clients to whom you personally provided legal services, as well as any specific party matters that you worked on personally and substantially that are still pending at EPA. I have already incorporated the CARE v. EPA case into your recusal statement as well as FOIA-2021-000375 given your participation.

8. As we discussed, you understand that you have bar obligations regarding those cases anyway.

APPOINTMENT RESTRICTIONS

Your initial type of appointment at EPA will be a temporary Schedule C for now. We in EPA Ethics don't know when you will be converted to a Non-Career SES. But this appointment distinction is important because the ethics rules will apply differently depending on your appointment type. I want to clarify what this means for you, in addition to providing you information about outside employment guidance that we very recently received from the Presidential Transition Team.

9. Per the PTT, non-PAS political appointees may have outside positions that are consistent with federal ethics regulations, including the Agency's ethics regulations.
10. This means that Non-Career SES and Schedule C appointees may have outside positions, provided that they seek prior approval from EPA Ethics for the outside activity consistent with EPA's Supplemental Ethics Regulations at [5 C.F.R. 6401.103](#).
11. But once you convert to non-career SES, you will be subject to the following additional restrictions:
 1. You will be subject to the outside earned income cap that is set each January. As of January 2021, that amount is \$29,595. See [5 C.F.R. § 2635.804\(b\)](#) and [5 C.F.R. § 2636.304](#). This amount changes each year.
 2. You may never receive compensation for practicing a profession that involves a fiduciary relationship; affiliating with or being employed by a firm or other entity that provides professional services involving a fiduciary relationship; or teaching without prior approval. See note to [5 C.F.R. § 2635.804\(b\)](#) and [5 C.F.R. § 2636.305](#).
 3. You may, however, be permitted to serve as an officer or member of the board of any association, corporation or other entity, but cannot be compensated for such service. See [5 C.F.R. § 2636.306](#).
 4. A Schedule C appointee is restricted only from accepting compensation for any teaching, speaking or writing that relates to their official duties, which includes 1) matters to which the employee is presently assigned or has been assigned in the previous year; or 2) any ongoing or announced policy, program, or operation of the Agency. [5 C.F.R. § 2635.807\(a\)\(2\)\(i\)\(E\)\(1\)-\(2\)](#). However, once you are converted to non-career SES, you will not be able to receive compensation at all for any teaching, speaking or writing that relates to your official duties or even to the general subject matter area, industry, or economic sector primarily affected by the programs and operations of the Agency. [5 C.F.R. § 2635.807\(a\)\(2\)\(i\)\(E\)\(3\)](#).
 5. You may not receive compensation for any other teaching unless specifically authorized in advance by the DAEO. See [5 C.F.R. § 2636.307](#).

These distinctions are important for you given your teaching obligations that may still be lingering when you join the Agency. If those obligations are still present when you convert to Non-Career SES, you will not be able to accept further compensation for teaching in the subject matter area, industry, or sector

that is affected by the programs and operations of the EPA. That would include, for example, environmental law or courses on environmental justice. Please be mindful of this nuance and coordinate with the White House Liaison and EPA's Office of Human Resources to ensure that you are able to comply with the ethics obligations of the new position. You may, for example, want to consider a delay in your conversion to Non-Career SES until you have finished your teaching obligations. Simply accepting compensation up front may not be sufficient to meet your ethics obligations as Non-Career SES.

SPEAKING ENGAGEMENTS

Turning to your current speaking engagements, you provided me with a list of 7 upcoming engagements that you anticipate fulfilling in your "individual" capacity. By that, I assume you mean that you will be speaking in your **personal capacity**. We have two types of capacities in federal ethics.

1. Personal capacity means you are acting as a private citizen of the United States and represent no one's interests by your own. When doing something in your personal capacity, you must use your own time and resources. You may not use government time or resources, including subordinates. You may not use nonpublic or confidential information. You may include, or permit the sponsor or host to include, your EPA position or affiliation as a biographical detail, but it cannot be your sole identifying detail. If you do refer to EPA, then you must include a clear disclaimer that you are not speaking on behalf of the US Government or the Agency but rather in your personal capacity.
2. Official capacity means you are acting within the scope of your EPA duties, under the auspices of your EPA supervisor, and you are representing EPA. You may refer to your EPA position or affiliation without a disclaimer and can use EPA time and resources in furtherance of the activity. However, you cannot share nonpublic or confidential information.
- 3.

UPCOMING EVENT OR ACTIVITY	EPA ETHICS ANSWER AND EXPLANATION
January taping for subsequent airing: podcast with Environmental & Energy Law Program at Harvard Law School, focusing on civil rights enforcement in the EJ context.	If you complete the taping before joining EPA, then there is no federal ethics issue, and you may accept compensation. However, if you tape your submission after you join EPA, then you may not be able to accept compensation and will need to seek prior approval of this outside activity from EPA Ethics. Given the subject matter and how soon it arises in the Biden Administration, Justina advises that it's unlikely to be considered part of official duty.
Thursday, January 28 th , Temple B'Nai Torah, panel entitled, "Relating to our planet: Environmental Justice, Shmita, and Making Positive Change," a part of the Big Bold Jewish Climate Festival, (https://www.jewishclimatefest.org/).	You may present in your personal capacity but must seek prior approval of this outside activity from EPA Ethics. Given the subject matter and how soon it arises in the Biden Administration, Justina advises that it's unlikely to be considered part of official duty.
Tuesday, Feb. 2 guest lecture in Resilience and Sustainability class at Vermont Law School.	Because you will have a covered relationship with Vermont Law School, you can do this lecture only on your own time in your personal capacity. You will need to seek prior approval from EPA Ethics and will not be able to accept compensation.
Wednesday, Feb. 10 in the evening: guest	You may present in your personal capacity but must

lecture at UCLA Environmental Justice class.	seek prior approval of this uncompensated outside activity from EPA Ethics. If you wish to present in your official capacity, then the invitation will have to be reissued by UCLA.
Saturday, Feb. 27: Community Visions for Environmental Justice Organizing conference, a joint effort between Duke's Environmental Law & Policy Clinic, Howard Law School's Environmental Justice Center, Vermont Law School's Environmental Justice Clinic and Environmental Justice Law Society, and the Yale School of the Environment. I'm scheduled to moderate a panel discussed on "Seeking Justice Through Policy: Environmental Justice Legislation and Executive Action."	Because you will have a covered relationship with Vermont Law School and Yale University, you can do this lecture only on your own time in your personal capacity. You will need to seek prior approval from EPA Ethics and will not be able to accept compensation.
Wednesday, March 10, Texas Environmental Law Journal Symposium, Proving Discrimination in Title VI Challenges to Environmental Programs, at UT Austin.	You may present in your personal capacity but must seek prior approval of this uncompensated outside activity from EPA Ethics. If you wish to present in your official capacity, then the invitation will have to be reissued by UT Austin.
Thursday, March 25 th , Northeast Summit for a Sustainable Built Environment (NESSBE), talk focused on equity work with the GC3 in Connecticut.	You may present in your personal capacity but must seek prior approval of this uncompensated outside activity from EPA Ethics. If you wish to present in your official capacity, then the invitation will have to be reissued to you.

You had also provided me with a draft article that will be published in an environmental law journal. This was a piece that was drafted prior to your appointment at EPA, though it will be published during a time while you are at EPA. If you refer to your EPA position and title, then the article must include the following disclaimer::

This work is not a product of the United States Government or the United States Environmental Protection Agency. The author is not doing this work in any governmental capacity. The views expressed are her own and do not necessarily represent those of the United States or the US EPA.

Alternatively, you may decide not to reference EPA at all, and then no disclaimer is necessary. Please note that this advice is predicated on the assumption that you will not be compensated and that you will not be working on or editing the article after your employment with EPA. If you need to work substantively on the article after joining federal service, then you may need to seek prior approval from us.

I apologize for how long this email has become, but I hope it helps explains your ethics obligations and will provide you with some solid guard rails until we can formalize a recusal statement for you.

If you have any questions, please don't hesitate to reach out. If you're amenable, I'd be happy to speak with you tomorrow to answer any questions you have or go over anything in more detail.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Sunday, January 17, 2021 1:35 PM
To: Marianne Lado (b) (6)
Cc: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: Greetings form the EPA Ethics Office!

Marianne,

Victoria drafted a response to you that I'm reviewing over the weekend. We have to take into account the news that non-career SES appointees may be permitted to have outside positions, subject to ethics rules. And those ethics rules have to do with prior approval of an outside activity and any possible compensation. Victoria will be in touch soon.

Justina

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Date: Sunday, January 10, 2021 at 11:43 PM

To: (b) (6)

Cc: "Clarke, Victoria" <clarke.victoria@epa.gov>

Subject: Greetings form the EPA Ethics Office!

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REPORTING TRANSACTIONS

While you are in this position, you are a public financial disclosure filer who is subject to certain additional requirements of the Ethics In Government Act as amended by the STOCK Act. You will be required to report any purchase, sale or exchange of stocks, bonds, commodities futures or other forms of securities when the amount of the transaction exceeds \$1000. Use INTEGRITY to disclose reportable transactions within 30 days of receiving notification of the transaction, but not later than 45 days after the transaction occurs. You will have to report transactions that occur within brokerage accounts, managed accounts, or other investment vehicles that you own or jointly own with your spouse or another person, as well as transactions of your spouse or dependent children. We will go over this requirement during your initial ethics training, but I’ve also attached our reminder about late fees and when to report transactions. Remember, you are responsible for reporting transactions, even if you have a managed account, and you will be fined for a tardy periodic transaction report.

YES, YOU CAN BE FINED FOR NOT FILING PROMPTLY

It’s worth repeating that you can be fined \$200 for not meeting the submission deadline (and you still have to file that report). PLEASE pay attention to your filing requirements! If you need an extension, then you must ask before your deadline expires. There is a limit to how much additional time you may receive.

HELPFUL HINTS FOR FILLING OUT THE FORM

1. This is a wretched and exacting form, so just know that you will have to provide a lot of information.
2. You will get three different places to report assets: filer’s employment-related assets and

income, spouse's employment related assets and income, and other assets and income. You must report assets for yourself, your spouse and any dependent children. We don't really care where you report your assets, just that you do report them all someplace.

3. You must include any investment asset that is worth more than \$1000. Include any income from any source that exceeded \$200 during the reporting period (including outside jobs or hobbies, rental income). Include any cash/savings accounts that have more than \$5000.
4. Enter each asset separately. Don't lump items together on one line. Be sure to provide the valuation of the asset AND the amount of the income. For assets that aren't mutual funds, you also have to report the type of income (e.g., dividends, cap gains).
5. For 401(k) or IRA plans, provide the name of each of the underlying assets. Don't just write "Vanguard IRA" or "mutual fund." You must specify each asset separately and give the valuation but, for these assets in tax deferred instruments, you do not need to provide the amount of income accrued.
6. Do not report your federal salary, your spouse's federal salary, or Thrift Savings Plan information
7. If you (not your spouse) have any earned income (e.g., outside job, paid pension), you have to report the actual amount of that income.
8. If your spouse works outside of federal service, then include your spouse's employer but not the amount of your spouse's salary. If you are not legally married, do not report your significant other's employer.
9. Don't forget to include any life insurance policies (whole life or variable life) as well as the underlying investments. Do not report term life insurance.
10. If you have nothing to report in a section, be sure to click the "nothing to report" button
11. The various parts of the form have different reporting periods, so please consult the attached "reporting periods" chart. Remember to check out the Office of Government Ethics' [Public Financial Disclosure Guide](#) or to contact OGC/Ethics for help. We know this is a beast of a form, so we really are here to help you.

OTHER ETHICS REQUIREMENTS FOR YOU

HATCH ACT

As a federal employee, you will be "lesser restricted" under the Hatch Act. During your new employee orientation, the ethics staff will go over the Hatch Act, which governs the political activity of government employees. For a refresher, you can familiarize yourself with the Hatch Act as it affects you by reviewing our attached handy chart.

ETHICS TRAINING

As a public financial disclosure filer, you must take one hour of ethics training this year. The new employee training you will have with the ethics staff meets your annual training requirement for this year. Next year,

you will take the annual training online.

If you have any questions regarding this message or your obligations, then please let Victoria or me know.

Cheers,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North,
William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip
code) | phone 202-564-1786 | fax 202-564-1772

From: [Marianne Lado](#)
To: [Clarke, Victoria](#)
Cc: [Fugh, Justina](#)
Subject: Re: Greetings from EPA's Ethics Office!
Date: Thursday, January 07, 2021 1:37:37 PM

Terrific!

From: "Clarke, Victoria" <clarke.victoria@epa.gov>
Date: Thursday, January 7, 2021 at 1:36 PM
To: (b) (6)
Cc: "Fugh, Justina" <Fugh.Justina@epa.gov>
Subject: RE: Greetings from EPA's Ethics Office!

Super! I will schedule us for Tuesday the 12th at 2:00pm.

A calendar invite should arrive shortly.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Marianne Lado (b) (6)
Sent: Thursday, January 07, 2021 1:25 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Re: Greetings from EPA's Ethics Office!

Thanks for reaching out!

Let's find a time next week: I'm fairly open on Tuesday the 12th, including before 10 am and between noon and 6, and on Wednesday before 10 and after 4. Would any of those time slots work for you?

I look forward to the conversation.

Best,

Marianne

From: "Clarke, Victoria" <clarke.victoria@epa.gov>

Date: Thursday, January 7, 2021 at 12:29 PM

To: (b) (6)

Cc: "Fugh, Justina" <Fugh.Justina@epa.gov>

Subject: Greetings from EPA's Ethics Office!

Hello, Marianne!

My name is Victoria Clarke and I am an ethics attorney in the EPA's Office of General Counsel. I understand that you will shortly be joining the Agency and that you'll be coming to the Office of General Counsel. Congratulations!

While Justina Fugh, the Director of the Ethics Office, will be handling your initial onboarding, I was hoping to speak with you before you start, so that I can not only get a sense of what your ethics obligations are, but also to introduce myself as the Office of General Counsel's Deputy Ethics Official. Do you have any time tomorrow or next week for a Microsoft Teams meeting?

Looking forward to speaking with you,
Victoria

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